

SRA Board

1 June 2016

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Looking to the Future: Handbook Review

Purpose

- 1 We are asking that the Board agree to consult on proposals for new SRA Principles, Codes of Conduct and policy changes that deliver greater flexibility and freedom to practice while maintaining high professional standards.

Recommendations

- 2 The Board is asked to:
 - a) agree to launch the consultation at annex one in the public session of the Board (paragraphs 17-18)
 - b) note the proposed 16-week consultation period (paragraphs 17-18)
 - c) note the comprehensive stakeholder engagement carried out to date and the plans to continue this throughout the consultation period (paragraphs 19-25).

If you have any questions about this paper, please contact:

Crispin Passmore, Executive Director, Policy
crispin.passmore@sra.org.uk or 0121 329 6687

Juliet Oliver, General Counsel
juliet.oliver@sra.org.uk or 0121 329 5987

This paper is sensitive because it relates to draft policy that will be published at a later date subject to Board approval.

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Looking to the Future: Flexibility and public protection - a phased review of the SRA Handbook and our regulatory approach - Principles, Code of Conduct and Practice Framework Rules

Overview

- 3 We want to do more to allow greater flexibility for solicitors and freedom for firms to innovate, compete and grow. This will help improve access to quality services at affordable prices.

- 4 We are proposing a future regulatory model that makes clear two distinct strands:
 - We regulate individuals to use the "solicitor" title. This area of regulation is about education and entry standards, and ongoing competence and ethical behaviours
 - We regulate firms to allow them to deliver reserved legal activities. This is about systems of control in the firm and the availability of further consumer protections - including professional indemnity insurance (PII) arrangements and access to our Compensation Fund.

- 5 We are proposing two separate Codes of Conduct to underpin this regulatory approach:
 - The SRA Code of Conduct for Solicitors, RELs and RFLs [2017]: All solicitors no matter where they practise, will have to comply with this Code. This will ensure that each solicitor will be able to easily understand their personal obligations and responsibility to maintain the highest professional standards
 - The SRA Code of Conduct for Firms [2017]: This aims to provide more clarity to firms that we regulate about the business systems and controls that they need to have in place, and what their responsibilities are as an SRA regulated business.

- 6 We have reviewed the range of restrictions we currently place on solicitors and firms. We propose to remove those we consider unnecessary and disproportionate. The key change in our proposals is to remove the current restriction on solicitors delivering services to the public in businesses that are not regulated by the SRA or any other approved legal services regulator.

Benefits and rationale

- 7 The redrafted Codes are shorter, more focused and clearly define the boundary between individual and entity regulation. They replace detailed and prescriptive requirements with more general overarching provisions. By removing complexity, and increasing flexibility in the way that our standards can be met, the revised approach is likely, in our view, to reduce the overall cost of regulatory compliance on firms and individuals in the longer term.

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- 8 The revised model gives flexibility to providers and individuals to establish themselves in different ways. For example:
- Individuals can obtain a solicitor qualification as a sign of their competence and professionalism. It tells employers and the public that since these individuals are bound to comply with the provisions of the Code of Conduct, they are likely to be competent, maintain ethical standards, and are part of a regulated community
 - Legal services providers would be able to employ solicitors to deliver non-reserved legal services to the public whether or not the firm is itself regulated by us or another legal services regulator. This is not allowed under our current regulatory framework. It will be up to the firm to decide if it wants to tell consumers and the public that it employs solicitors, as consumers may draw confidence from their professional status. Of course, firms that want to deliver reserved legal services must be authorised by us or by another legal services regulator, as set out in current legislation
 - Firms regulated by us can signal to consumers and the public that they meet our regulatory requirements, that certain additional consumer protections are in place and that they are entitled to carry on reserved legal activities should they wish to do so.
- 9 Such an approach also increases consumer choice. Under the proposed new arrangements, consumers will be able to:
- Use a solicitor in an SRA regulated firm (with all the consumer protections that brings) - as they can now
 - Use a solicitor in a firm within the alternative legal services market (with all the consumer protections that the individual solicitor carries with them) - a new option - or
 - Not use a solicitor and continue to access non-solicitor services within the alternative legal services market - again, as they can now.
- 10 Our existing regulatory framework makes it challenging for solicitors to compete with providers in the alternative legal services market. These alternative providers operate across the sector, providing everything from will writing, legal services relating to social welfare and housing, to advice on media law, commercial contracts and tax. Our existing rulebook restricts where and how solicitors can work. While most legal services can be delivered outside of regulation, solicitors, the people who are arguably best placed to deliver quality non-reserved legal services, cannot do so with any degree of ease or flexibility. This is because solicitors must practise through a 'firm' authorised by one of the legal services regulators whenever they provide services to the public or a section of the public. The regulation that flows from this can make entry to the market difficult.
- 11 More generally, the combination of the detailed prescription within our existing Codes and a “one size fits all” approach means that we are always one step behind the market. This results in us having to regularly update our Handbook – we are on version 16 since

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2011. Importantly, it also makes it difficult for existing firms to innovate and for new entrants that do not operate in a 'standard' way to be authorised even when their offering would benefit consumers and help access, while presenting no significant risk to the regulatory objectives. We currently try and find workarounds to our own rules in these circumstances, for example through granting waivers. The long term solution must be genuine flexibility delivered through a high level approach to regulation and standards. This will also drive a better understanding – across the profession and the public – of risk to our public interest purposes. This is the opposite of a tick box approach and detailed compliance systems.

Background

- 16 The Board published our Looking to the Future paper in November 2015. This builds on the Board's 2014 Policy Statement, Approach to Regulation and its Reform, which was updated in November 2015. That statement provides clarity about the purpose of our regulation and how we deliver it. This current Handbook review is the next step in the modernising reform programme that we have been delivering over the last two years to meet this aim. We have, for example, reduced our Handbook by over 200 pages by removing unnecessary and prescriptive rules. We have made changes that facilitate multidisciplinary practices and allow solicitors to own separate businesses delivering legal services that do not have to be regulated.

Consultation

- 17 These are important reforms so we are proposing a 16-week formal consultation.
- 18 The consultation document is set out at Annex one and the questions we propose to ask are summarised after paragraph 170 of the document.

Recommendation: the Board is asked to:

- a) **agree that we launch the consultation at annex one in the public session of the Board**
- b) **note the proposed 16-week consultation period**

Engagement

- 19 These proposals have been developed with substantial input from operational colleagues across the organisation. We have tested our proposals, including to ensure that the draft codes meet the operational needs of the business. Our policy has been informed by data and intelligence about the changing legal services market and our internal regulatory data. We have reviewed the proposed Principles and Codes of Conduct against the findings of our Question of Trust campaign and are satisfied that they align.
- 20 The Policy Committee (and previously the Standards Committee) has played a very significant part in shaping proposals. A series of discussions and papers have

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developed the proposals from broad strategy to the attached consultation proposals. The documents now being presented to the Board reflect all of the input received from the Policy Committee. In short, the proposals and documents have been subject to thorough scrutiny by the Committee before coming to the Board for approval.

- 21 We have adopted a proactive approach to external stakeholder engagement ahead of formal consultation. This has been of great value in helping us to develop and refine both our policy thinking and the drafting of the revised content.
- 22 We have developed digital content and delivered webinars. We have shared thinking with our *Looking to the Future, Equality and Inclusion and Small Firm Virtual Reference Groups*¹. We have an open-ended comments section on our Looking to the Future web pages. We have met with a wide range of representatives from different groups. This includes, for example: the Legal Services Consumer Panel, sole practitioners, in house lawyers, local authority lawyers, multidisciplinary practices, accountants and various Law Societies (including several meetings with the City of London Law Society) and groups representing lawyers with protected characteristics. We have trailed our proposals at a number of conferences including the 2015 Compliance Conference and the SRA Innovate Conference as well as a range of commercial events. There has been a positive reaction to the emerging proposals and in particular to the increased regulatory flexibility.
- 23 We will continue to pro-actively engage during the consultation period as part of our comprehensive stakeholder engagement strategy. This will feed into our final proposals and help us understand potential impacts.
- 24 As well as a number of engagement events scheduled across England and Wales, we are continuing to develop quick and easy ways to gather views of different types of stakeholders who are unlikely to engage with the formal consultation. This builds on some of the techniques successfully used in the Question of Trust campaign, which gathered views from around five and a half thousand people through a range of different channels. There is a sharp digital and social media focus to our strategy.
- 25 We are using a range of different ways of engaging with consumers and their representatives in discussion with the Legal Ombudsman, the Legal Services Consumer Panel and other regulators. We have held the first of a series of events with consumer representatives in Wales and have further ones planned in England. We have directly met with a range of agencies that work with vulnerable consumers, including representatives from Citizens Advice, Law Centres, Shelter and independent advice agencies.

Recommendation: The Board is asked to:

- c) note the comprehensive stakeholder engagement carried out to date and the plans to continue this throughout the consultation period.**

¹ An online discussion group with a wide range of representatives from the profession

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Impact assessment

26 For the purpose of the initial impact assessment we have grouped the proposed changes to the Handbook into two broad areas:

- implementation of a set of drafting principles to restructure and clarify the SRA Principles 2011 and SRA Code of Conduct 2011 supported by compliance resources to help individuals and firms
- proposed policy changes about where solicitors can practise that will be introduced through new Practice Framework and Authorisation Rules.

27 We have looked at the potential impacts on both firms and consumers, including commissioning an external economic assessment from Dr Chris Decker (a summary is attached at annex seven). We have included a separate section within the assessment looking at potential Equality, Diversity and Inclusion (EDI) impacts. Where we have identified possible adverse impacts arising from any of our proposals, we explain the steps we will take to mitigate these.

28 In general terms, Dr Decker indicates that consumers can be expected to benefit from the proposed changes because they widen choice, increase access to professional lawyers and may reduce prices. The proposals do not simplify choice for consumers nor guarantee that consumers will always be able to exercise choice wisely.

29 Consumer information is a key component of our reform programme. We already have a programme of work to help consumers understand the choices they have between types of providers in the legal services market, and to mitigate any risk that less knowledgeable consumers using non-SRA regulated firms may mistakenly think that they have a greater level of regulatory protection than they do. This is set out in the consultation document from para 119.

Support in meeting the SRA's regulatory requirements

30 We are also developing a programme to support to help those we regulate understand the changes we are proposing and how to comply in the longer term. This is set out in the consultation document from para 53.

Next steps

31 We will return to the Policy Committee with our initial analysis of the consultation responses in November 2016 and update the Board in December 2016. Post-consultation proposals are likely to be put before the Board in the first quarter of 2017. Our second consultation on the SRA Handbook, later this year, will set out details relating to the implementation of rules and associated operational impacts, including our authorisation, practice framework and disciplinary rules.

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- 32 We have also started work revising our enforcement policy so that those we regulate (and other interested parties) can better understand what breaches of our standards we consider most serious, when we might take action and the factors we will consider. The findings of the Question of Trust campaign will inform this work.

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Supporting information

Links to the Strategic Plan and / or Business Plan

33 Links to the Strategic Plan and Business plan are set out in the Background section of the main paper but the primary focus is in securing the first of the four plan aims.

How the issues support the regulatory objectives and best regulatory practice

34 Through our initial impact assessment, we have assessed these changes against our regulatory objectives, the better regulation principles and our wider equalities duty. Where we have identified possible adverse impacts arising from our proposals we explain the steps we will take to mitigate these. We are also publishing an independent assessment of the potential in principle economic benefits and risks of the proposed changes. It considers positive and negative impacts on competition and innovation and on different stakeholders (consumers, solicitors and providers) that could arise of our proposals, which in turn could drive broader economic effects.

Public/consumer impact

35 This is set out in detail in the draft initial regulatory impact assessment. We have set out a high level summary of the potential public and consumer impact of the proposals identified in the independent assessment of the economic rationale and possible impacts of the proposed changes at paragraphs 26-29 of this document.

What engagement approach has been used to inform the work and what further communication and engagement is needed?

36 A summary of this is found at paragraphs 19-25 of this document.

Equality and Diversity impacts

37 There are a range of equality and diversity impacts identified in our initial impact assessment.

How the work will be evaluated

38 Work to develop a framework for evaluation will form part of Phase 2 of our review. We will consider whether there are any gaps in our knowledge following consultation that we are unable to fill. If so, we will give consideration at that stage to commissioning further external input to the review. Part of the work in Phase 2 will be to develop a framework for evaluating the effectiveness and effect of our reforms over the medium term.

39 As we work toward final impact assessments we will also consider:

- any further evidence and recommendations arising from the ongoing CMA market study of the legal services market

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- any further published research, and contributions to the evidence base, during the consultation and implementation period.

Authors Crispin Passmore and Juliet Oliver

Contact Details Crispin.Passmore@sra.org.uk Juliet.Oliver@sra.org.uk

Date 24 May 2016

Annexes

Annex one **Looking to the future: flexibility and public protection - a phased review of the SRA Handbook and our regulatory approach Principles, Code of Conduct, and Practice Framework Rules** (pages 10 to 54)

Annex two **SRA Code of Conduct for Solicitors, RELs and RFLs [2017]** (pages 55 to 62)

Annex three **SRA Code of Conduct for Firms [2017]** (pages 63 to 68)

Annex four **SRA Glossary for Code of Conduct for Solicitors, RELs and RFLs [2017] and SRA Code of Conduct for Firms [2017]** (page 69)

Annex five **Rationale document for proposed Codes of Conduct** (pages 70 to 80)

Annex six **Initial regulatory impact assessment** (pages 81 to 115)

Annex seven **Economist's report (summary)** (pages 116 to end)

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Looking to the future - flexibility and public protection

A phased review of the SRA Handbook and our regulatory approach Principles, Code of Conduct, and Practice Framework Rules

Foreword

The legal sector is changing at pace. That means our regulation must be up to date and fit for purpose, providing public protection without hampering the growth and innovation that drives a competitive and effective legal sector.

I am pleased we have achieved so much in the last two years, cutting unnecessary regulation and freeing up firms to do business. We worked closely with solicitors and groups like the City of London Law Society, the Sole Practitioners Group and local law societies to identify potential changes, while protecting the public interest. We have learned a great deal and I am grateful to all those who have helped.

But there is much more to do.

At the heart of the work of any regulator is setting and maintaining high professional standards – the standards the public expect. And with a clear emphasis on that, we can give solicitors and firms more freedom and flexibility. So we are planning to radically simplify our Handbook, starting with revising the Principles and the Code of Conduct.

For the first time, we are proposing two separate codes - a Code of Conduct for Solicitors and a Code of Conduct for Firms. These replace detailed and prescriptive requirements with a framework for competent and ethical practice. Every solicitor will be absolutely clear about their personal obligations and responsibility to maintain the highest professional standards. Firms will have clarity about the systems and controls they need to provide good legal services for consumers and the public.

And I want us to help address the problem of access to justice - the widespread unmet need among the public and small businesses. People want affordable and relevant services. It makes no sense that solicitors are banned from offering non-reserved legal services, such as legal advice, in the firms that have grown up to meet that need.

So the key change in these proposals, beyond the two simple Codes of Conduct, is the first ever opportunity for solicitors to freely deliver services outside of regulated firms.

The new shorter, sharper, clearer Handbook will be supported by extra resources, in line with the growing range of dedicated support we already provide. That will include clear guidance for the public on what they can expect and what protections they have.

In further steps, we are consulting alongside this document on new accounts rules. Later this year we will be sharing proposals to support the new Codes with changes such as revised

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authorisation and practice framework rules. And we will also revise our enforcement policy to give real clarity about what action we will take when solicitors or firms fall short of the high standards we set. Our successful 'Question of Trust' campaign gave us the opportunity to hear the views of over 5,000 people on what that action should be.

As with reforms we have delivered over the last two years, we are confident that our proposals will help the legal market to grow. That matters: it is good for lawyers, for their business and the economy, but most of all it is the best way to tackle the unmet need. That matters to us all.

These are important reforms so the Board and I, and staff from across the organisation, have spoken to hundreds of solicitors and firms about these changes over the last 18 months. And we will be consulting for an unprecedented 16 weeks.

Please get involved. Respond to the consultation, come to an event, join our virtual reference group. Together we can uphold the highest professional standards, while driving a healthy, growing legal sector that offers real public choice and access.

Enid Rowlands

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Structure and content of the consultation paper

- 1 Section 1 of this consultation paper (Introduction and Overview) sets out our proposed regulatory approach, why there is a need for change and the benefits that it would bring. It also details the potential impact these reforms may have.
- 2 Section 2 of this consultation paper (Principles and Codes of Conduct) sets out detail on the development, content, and structure of our proposed new set of SRA Principles, and Codes of Conduct for Solicitors² and for Firms. In this section, we describe our approach to developing these proposed new regulatory arrangements. We seek your input and views on a number of key policy issues, as well as on our general approach and the content of the draft Codes themselves.
- 3 The draft Principles and Codes of Conduct are annexed to this paper (see annexes 2 and 3). These are supported by a Glossary (annex 4) and a rationale document (annex 5) that sets out detail of the drafting principles underpinning the proposed new Principles and Codes.
- 4 Section 3 of this paper sets out in detail our proposal to allow solicitors to deliver some legal services to the public from providers that are not regulated by the SRA or another legal services regulator.
- 5 Section 4 looks at consumer protection and the impact the proposed reforms may have.

How to get involved

- ❖ Respond to the consultation paper by the closing date of 21 September 2016.
 - ❖ Comment and contribute to the debate on how the SRA can best produce case studies and other materials to support firms in these changes throughout the consultation period - by leaving your comments on the SRA website [\[DN - add link\]](#)
 - ❖ Attend one of the consultation events [\[DN - add link\]](#)
 - ❖ Register for a webinar [\[DN - add link\]](#)
 - ❖ Join a virtual reference group [\[DN - add links to both Handbook and small firms groups\]](#)
- 6 Contact [SRA Innovate](#) if you have been thinking of a new way to serve your clients and run your organisation, or have an idea, but are not sure whether regulation could stop it getting off the ground. SRA Innovate is open to existing firms and new entrants, alternative business structures (ABS) and traditional law firms.

² The Code for Solicitors also applies to RELs and RFLs

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Key terms

7 Within this consultation, we refer to a number of acronyms and key terms that it may be helpful to explain up front. These are as follows:

- **ABS** (alternative business structure) – a firm with non-lawyer ownership and/or management, which is authorised by the SRA or another approved regulator under the Legal Services Act 2007
- **alternative legal services providers** - providers of legal services that are not authorised by the SRA or by another approved regulator under the LSA. By definition, these are businesses that provide only non-reserved legal services and do not employ practising solicitors to provide services to the public. Some of these providers will not be subject to professional regulation but will be bound by more general regulations (for example, consumer protections) applying to goods and services. Others may be subject to professional regulation elsewhere (for example as chartered accountants), but they are not regulated by an approved (legal services) regulator as defined by the LSA. In its report *Redress for Legal Services*, prepared for the Legal Ombudsman, Northumbria University Law School termed this the 'Alternative Legal Services Market'¹ and we have adopted this term for the purposes of this paper
- **LSA** - Legal Services Act 2007
- **MDP** (multidisciplinary practice) - a body providing a range of different services, only some of which are regulated by the SRA.
- **recognised body** – a firm of solicitors authorised by the SRA under s9 of the Administration of Justice Act 1985
- **regulated firm** – a firm regulated by the SRA (i.e. a recognised body, recognised sole practice or a licensed body (ABS) that we have authorised)
- **RSP** – a recognised sole practice authorised by the SRA

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Section 1: Introduction and Overview

Reviewing our regulatory approach - the need for change

- 8 In November 2015 we published our paper [Looking to the Future](#). This paper set out our vision for the future of how we regulate. It outlined a proposed new approach designed to make sure that our regulation is targeted, proportionate and fit for purpose in a fast changing and dynamic legal services market. It also set out our intention to redraft our existing Handbook to make it shorter, clearer and easier to use. In this consultation paper, we will set out our thinking in more detail. We invite you to let us know your views on the proposed changes, and our assessment of their likely impact.
- 9 The ways people find, access, and use legal services are changing. In response solicitors, law firms and other organisations are offering new services in more innovative ways and through new business models. There is also an expanding alternative legal services market, which is operating across the sector. It provides everything from will writing, legal services relating to social welfare and housing, to advice on media law, commercial contracts and tax.
- 10 But research tells us that many people and small businesses still cannot access the legal advice that they need, at an affordable price³. As a regulator, we have a duty to consider how the way we regulate can help to address this, and to ensure that this gap is narrowed.
- 11 Our existing regulatory framework makes it challenging for solicitors to compete with providers in the alternative legal services market. Our existing rulebook restricts where and how solicitors can work. While most legal services can be delivered outside of regulation, solicitors, the people who are arguably best placed to deliver quality non-reserved legal services, cannot do so with any degree of ease or flexibility. This is because solicitors must practise through a firm authorised by one of the legal regulators whenever providing services to the public or a section of the public.

Overview - our revised regulatory approach

- 12 We want to do more to allow greater flexibility for solicitors and freedom for firms to innovate, compete and grow. This will help improve access to quality services at affordable prices. We have reviewed the range of restrictions we currently place on solicitors and firms and propose to remove those we consider unnecessary and disproportionate. That includes removing the current restriction preventing solicitors delivering non-reserved activities to the public in businesses that are not regulated by the SRA or any other approved legal services regulator.

³ See for example:

<https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

<https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>

<https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>

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13 In this paper, we propose a future regulatory model that makes clear two distinct strands:

- We regulate individuals to use the "solicitor" title. This area of regulation is about education and entry standards, and ongoing competence and ethical behaviours
- We regulate firms entitled to deliver reserved legal activities. This is about systems of control in the firm and the availability of further consumer protections - including professional indemnity insurance (PII) arrangements and access to our Compensation Fund.⁴

14 Two separate Codes of Conduct would underpin this regulatory approach:

- **SRA Code of Conduct for Solicitors, RELs and RFLs [2017]**⁵: All solicitors⁶, no matter where they practise, will have to comply with this Code. It aims to clearly set out the professional standards and behaviours expected of solicitors
- **SRA Code of Conduct for Firms [2017]**⁷: This aims to provide more clarity to firms we regulate about the business systems and controls they need to have in place, and what their responsibilities are as an SRA regulated business.

The benefits of reform

15 The redrafted Codes are shorter, more focused and clearly define the boundary between individual and entity regulation. These would replace detailed and prescriptive requirements with a framework for competent and ethical practice. We think the proposed new Codes of Conduct would help both individuals and firms to better understand the regulation that applies to them. By removing complexity, and increasing flexibility in the way that the standards can be met, the revised approach would also be likely, in our view, to reduce the overall cost of regulatory compliance on firms and individuals in the longer term.

16 The revised model clarifies existing flexibility for providers and individuals to establish themselves in different ways, as well as creating further options. For example:

- Individuals can obtain a solicitor qualification as a sign of their competence and professionalism. This qualification tells employers and the public that since these individuals are required to comply with the provisions of the Code of Conduct, they are likely to be competent, maintain ethical standards, and are part of a regulated community

⁴ The SRA Compensation Fund is a discretionary fund, from which awards may be made in circumstances where a loss has occurred during the normal work of a person or firm regulated by us, and an individual has suffered loss because of their dishonesty, or have suffered loss and hardship due to their failure to account for money received. The claimant does not need to be a client or a former client.

⁵ 'Code for Solicitors'

⁶ Solicitor includes RELs and RFLs where the context permits

⁷ 'Code for Firms'

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- Firms could employ solicitors to deliver non-reserved legal services to the public whether or not the firm is itself regulated by us or another legal services regulator. This is not allowed under our current regulatory framework. It would be up to the firm to decide if it wanted to tell consumers and the public that it employs solicitors, as consumers may draw confidence from their professional status. Of course, firms that want to deliver reserved legal services must continue to be authorised by us or by another legal services regulator, as set out in current legislation
 - Firms regulated by us can signal to consumers and the public that they meet our regulatory requirements, that certain additional consumer protections are in place and that they are entitled to carry on reserved legal activities should they wish to do so.
- 17 We anticipate that our proposals could result in better and cheaper access to qualified solicitors. They bring the SRA in line with other legal services regulators, such as the Institute of Chartered Accountants in England and Wales (ICAEW), Council for Licensed Conveyancers (CLC) and the Chartered Institute of Legal Executives (CILEX), which do not have similar restrictions to those currently included in the SRA Practice Framework Rules 2011.
- 18 Such an approach would also increase consumer choice. In practice, our proposed changes would mean that consumers would have a wider choice in the way that they access and use the services of a solicitor (where that is what they want or need). Under the proposed new arrangements, consumers would be able to:
- use a solicitor in an SRA regulated firm (with all the consumer protections that brings) - as they can now
 - use a solicitor in a firm within the alternative legal services market (with all the consumer protections that the individual solicitor carries with them) - a new option - or
 - not use a solicitor and continue to access non-solicitor services within the alternative legal services market - again as they can now.
- 19 Given the level of unmet need in the legal services market⁸, it is important that consumers have as many options as possible available to them. It is also important to give solicitors flexibility to work in different ways and compete with others in the alternative legal services market.

⁸ LSB research indicates that 79% of individuals and 83% of small businesses with a legal problem do not obtain professional help from regulated providers:
<https://research.legalservicesboard.org.uk/analysis/demand/individual-consumer-needs/>
<https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>

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20 We should note at this point, that there will be consequential changes to the policy on MDPs that we announced in November 2014, as the policy is based on the current Codes and regulatory structure. The main amendment would be in relation to solicitors who are working under non-SRA regulation as part of mixed teams. The intention is that the SRA Principles and the new Code for Solicitors would apply to those solicitors in full, as it will to solicitors practising in all other situations. However, at the entity level, the SRA Principles and the Code for Firms would only apply to SRA regulated activity within the MDP.

Handbook reform project - our phased approach to the review and proposed implementation

21 We are reviewing the SRA Handbook in two phases but we intend to implement all the proposed changes together on one launch date⁹. The first phase of the review (set out in this paper) sets out our proposed new SRA Principles and Codes of Conduct.

22 In this first phase, we have also started to work through the SRA Practice Framework Rules 2011 (PFRs) and the SRA Authorisation Rules 2011 (Authorisation Rules). These contained the detail about where and how solicitors can practice. These rules would need amending to remove unnecessary restrictions and to allow the greater flexibility described above. We set out the key policy proposals and some of the issues with them here, but not detailed drafting proposals.

23 We are in the process of scoping the second phase of the review. This will consider the rest of the content of the Handbook including any detailed revisions to the PFRs and the Authorisation Rules. We intend to consult on phase two later this year.

24 We have previously made some changes to these rules to allow recognised bodies and recognised sole practices to provide a wider range of services to the public. However, we do not think that these yet go far enough in helping implement our new model of regulation. We are therefore planning to look at the possibility of combining the current PFRs and Authorisation Rules - enabling us to develop a more streamlined and simplified set of Practice and Authorisation Rules - in the second phase of this project.

25 Our vision for a new set of Practice and Authorisation Rules is that they will be shorter, clearer and simpler. In the PFRs, in particular, we propose removing restrictions on practice. ***We are therefore keen to engage with stakeholders on the policy issues set out in Section 3 of this paper.*** As stated above we intend to implement changes coming out of phase one and phase two at the same time.

Our enforcement policy

26 We are currently undertaking a comprehensive review of our enforcement strategy and the decision-making framework we use in both supervision and enforcement matters. In addition to a comprehensive internal review and streamlining of this framework, we are

⁹ This date will be no earlier than November 2017.

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using feedback gathered from thousands of stakeholders as part of our recent Question of Trust [campaign](#) to help inform and shape a proposed new approach.

- 27 With freedom and flexibility comes responsibility. This is core to the concept of being a professional. It is what other lawyers rely upon (e.g. through undertakings) and it is also what the public expects (as our Question of Trust work makes clear). We trust solicitors and firms to use this flexibility to deliver an increasingly wide range of legal services that meet consumer demand and meet the regulatory standards we set for them.
- 28 If things do go wrong, we will take a proportionate response. But where we find that solicitors or firms have wilfully, carelessly or negligently misused their freedom, or have abused their position, that response can be robust. Within our enforcement strategy, we will look at the context of the wrongdoing, and how serious we believe the issue to be, given full consideration of the circumstances. Although the new Codes cover all aspects of a solicitor's conduct (or an entity's management), we will consider each report on a pragmatic case by case basis taking full account of all the evidence.
- 29 This may mean that we take into account private conduct in some cases, when considering whether there has been a breach of our Principles (see further below). This may depend on proximity to practice or impact on public confidence in the profession or the delivery of legal services. We will also consider the relative seniority of the wrongdoer, and the degree of harm caused (and to whom) when considering regulatory sanctions. Patterns of behaviour will also be relevant.
- 30 This approach requires firms and individuals to exercise their judgment in applying our standards to their situation and in deciding the appropriate course of action. If the course of action a firm or individual decides upon is in question, this approach requires us to assess the risk to our regulatory purpose (the need to provide appropriate protection to consumers, and to support the rule of law and administration of justice). We believe that the new Codes, taken together with a clear and defined enforcement strategy, will help both our staff and solicitors to understand our standards and how they can be met. **We expect to consult on our enforcement policy in 2016.**

SRA Suitability Test 2011

- 31 As part of our ongoing internal work to review our enforcement policy, we are also looking at the current SRA Suitability Test 2011. This test sets out the high personal standards (character, suitability, fitness and propriety) that all those seeking admission or restoration to the roll as a solicitor, as well as legally qualified and non-legally qualified applicants for certain roles¹⁰ in SRA authorised firms, must meet.
- 32 It is worth noting that no applicant has an automatic right of admission, restoration or authorisation and it will always be for the applicant to discharge the burden of satisfying suitability under the test. The current test applies to trainee solicitors, qualified lawyers under the SRA Qualified Lawyers Transfer Scheme Regulations 2011, those seeking admission under the SRA Admission Regulations 2011, those seeking to become

¹⁰ Such as compliance officer for legal practice and compliance officer for finance and administration

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authorised role holders and those seeking restoration to the roll of solicitors. Although our review is at an early stage, feedback to date is that there is scope for the Suitability Test to be reviewed in more detail, and potentially improved.

- 33 ***With that in mind, we are keen to gather your views on the current SRA Suitability Test 2011, how it works in practice, and any particular issues that you have encountered in respect of the practical application of the test (either on an individual basis, or in terms of business procedures or decisions).***

Consultation questions:

1) Have you encountered any particular issues in respect of the practical application of the Suitability Test (either on an individual basis, or in terms of business procedures or decisions)?

The role of the SRA competence statement

- 34 In March 2015, the SRA Board approved the publication of a competence statement for solicitors. Made up of three parts - a statement of solicitor competence, the threshold standard, and a statement of legal knowledge - the competence statement defines the continuing competences that we require of all solicitors.
- 35 The competence statement forms an integral part of our new approach to continuing competence. For a solicitor, meeting the competences set out in the competence statement helps to ensure they meet the requirement to provide a proper standard of service to clients. This remains an important focus in the revised Principles and the revised Codes of Conduct. We will ensure that the key changes in the Code for Solicitors and increased emphasis on standards, ethics and behaviours are reflected in our Competence Statement. This will ensure solicitors consider the contents of the Code for Solicitors when reflecting on their practice and addressing identified learning and development needs.

Stakeholder engagement

- 36 We have involved a wide range of stakeholders to help us develop our thinking so far. We have engaged widely since early 2015, and have also worked with external experts - an externally commissioned report on the likely economic impact of our proposals **[DN add link]** is published alongside this paper.
- 37 We have also published initial impact assessments **[DN add link]** alongside this consultation, including a regulatory impact assessment and a comprehensive market analysis. We have considered the equality and diversity impacts of our proposals, and have reflected these throughout our impact assessment.

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38 We recognise that the views of firms and businesses, employees, the profession and consumers will be crucial to the development of the structure and content of the new Handbook. We will engage widely with key stakeholders during the consultation period and in the period before implementing any changes to ensure we develop a regulatory framework that is both relevant now, and will stand the test of time. We will monitor the effect of the changes to our regulation, and will develop a framework to do so.

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Section 2: Principles and Codes of Conduct

What the consultation covers

39 We are consulting on the following:

- A revised set of SRA Principles [2017]
These set out high level ethical principles that comprise the fundamental tenets we expect all those that we regulate to uphold. This includes solicitors and other individuals we authorise, and firms and their managers, owners and employees.
- The SRA Code of Conduct for Solicitors, RELs and RFLs [2017]¹¹
This aims to set out clearly the professional standards and behaviours expected of solicitors in practice.
- The SRA Code of Conduct for Firms [2017]¹²
This aims to provide more clarity to firms that we regulate about the business systems and controls that they need to have in place and what their responsibilities are as an SRA regulated business.

Application of the Principles and the Codes of Conduct

- 40 The Principles would apply to all solicitors. As is the case now, they would also apply to SRA regulated entities and to their managers and employees. As high level principles, these apply to the conduct of solicitors and others both inside and out of practice. It would be artificial for that not to be the case, and indeed we are required to act on any report that may damage public confidence, or suggests the solicitor might present a risk when in practice (for example, a report of a lack of financial probity).
- 41 The Code for Solicitors lays out a framework for an individual's ethical and competent practice. The Code for Firms applies to entities we regulate and those working within them. The Code for Firms makes clear that managers are jointly and severally liable for any breaches by their firm and that employees can be personally liable for any breaches their activities cause. Standard 9 of the draft Code sets out the regulatory role of compliance officers, currently found within the Authorisation Rules.
- 42 Together these are a clear communication of the standards of conduct and behaviour we expect from those we regulate. This structure would be underpinned by an enforcement strategy that ensures we take action in relation to serious breaches where these present a risk to the public interest (as set out in our [Policy Statement](#)). A breach may be serious either in isolation or because it is part of a persistent failure to comply or pattern of behaviour.

¹¹ 'Code for Solicitors'

¹² 'Code for Firms'

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SRA Principles [2017]

- 43 In [Looking to the Future](#), we said that we were keen to explore whether we had the right number and balance of Principles.
- 44 We are consulting on a revised set of Principles, which we think best reflect the fundamental tenets we expect of those we regulate. We want revised principles to be easily understood, and owned, by the profession and the public alike, and to convey a clear message about our regulatory purpose. This purpose was set out in our [November 2015 Policy Statement](#): to protect consumers of legal services; and support the rule of law and the proper administration of justice.
- 45 The revised drafting has also taken into account our experience of supervising and enforcing against the current Handbook, including a review of referrals to the Solicitors Disciplinary Tribunal. This has therefore moved us beyond simply adopting the five professional principles from the LSA, which was an alternative option we considered.
- 46 We have set out these draft revised Principles in the table below. Some of the existing SRA Principles and professional principles are reflected in the revised standards in the draft Codes of Conduct. It is important to emphasise that we do not regard this as a dilution of their importance. The Code standards and the Principles are equally enforceable and are not interdependent. However, the Codes refer more specifically to expected practice standards, which is context specific, rather than overarching values and behaviours.

SRA Principles [2017]

You¹³ must:

1. uphold the rule of law and the proper administration of justice
2. ensure that your conduct upholds public confidence in the profession and those delivering legal services
3. act with independence
4. act with honesty and integrity
5. act in a way that encourages equality, diversity and inclusion
6. act in the best interest of each client.

In the event of any conflict between the Principles, then the Principle that best serves the public interest in the proper administration of justice will take precedence.

¹³ As set out in paragraph 40, this includes all solicitors in and out of practice and regulated firms and their non-solicitor managers and employees

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Consultation questions:

- 2) Do you agree with our proposed model for a revised set of Principles?**
- 3) Do you consider that the new Principle 2 sets the right expectations around maintaining public trust and confidence?**
- 4) Are there any other Principles that you think we should include, either from the current Principles or which arise from the newly revised ones?**

Codes of Conduct

The need for change - our proposed approach

- 47 The current SRA Code of Conduct 2011 is around thirty pages long, and applies with only limited distinction to individual solicitors, SRA regulated businesses and managers and employees of those firms. We think the current Code is long, confusing and complicated. It can make the line between individual and entity responsibilities blurred and difficult to apply.
- 48 We consider that we should provide greater clarity around the individual responsibilities of in-house solicitors and the standards they must uphold. If we proceed with the proposal to allow all solicitors to provide services to the public in alternative legal services providers, we will also need to be very clear about the responsibilities that these solicitors have. The current Code does not allow us to do this.
- 49 Nor does the current Code reflect the variety of modern solicitor practice. It is detailed and prescriptive and retains a strong focus on traditional models of legal practice. In order to reflect the increasingly diverse range of business models, we have had to rely on developing workarounds to the current regulatory arrangements and have granted a significant number of waivers over the past two years. This is not tenable in the longer term. Our Code is clearly not reflecting the realities of the market. In drafting the new Codes, we could have chosen to try producing different Codes for the different models and market segments that currently exist. However, that approach would only work in the short term because the market is constantly changing.
- 50 Our approach therefore has been to produce proposed Codes that focus on core professional standards and behaviours. This framework for competent and ethical practice will apply to all solicitors, wherever they work. The standards for firms are intended to be sufficiently broad to apply to all business models. The second phase of our review will simplify, and aim to future proof, the rest of our regulatory arrangements within the existing Handbook so that individuals and firms are very clear about the requirements that apply to them.

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- 51 In this first phase, we have chosen to redraft the SRA Code of Conduct as two separate Codes. This will make the distinction clearer between what is expected of an individual solicitor and SRA regulated firms (and by extension, to their managers and employees, and compliance officers). Separate codes will ensure that enforcement is similarly targeted. By adopting a structure that distinguishes between individual and firm regulation, we have also significantly reduced the overall requirements on firms and individuals.
- 52 On the whole we have sought to deliver a simpler articulation of our current requirements as opposed to a new series of obligations on those we regulate. But in drafting the new Codes we have identified a small number of areas where we consider protections were lacking, or that requirements were not as clear as they should be. Where this was the case, we have added new requirements (for example, obligations to "know your client" and only to act on instructions).

Supporting material - guidance and toolkits

- 53 We have provided further information about our approach to drafting the new provisions in annex 5¹⁴. This will form part of our support package. It sets out the common themes, including streamlining of the current outcomes and identifying and filling regulatory gaps. It also provides illustrative examples from the current and new Codes. During the consultation, we will be discussing the drafts in detail with representative bodies, as well as considering consultation responses. We will produce detailed FAQs and also technical webinars to discuss the detailed drafting.
- 54 We will be working closely with representative bodies to help us to develop our own online resources to support the new code once implemented. We are also open to working with stakeholders who are looking to develop their own bespoke guidance materials. We want to help firms and individuals to comply. The key to doing that is developing comprehensive and useable toolkits.
- 55 We would look to produce a compliance toolkit targeted particularly at in-house solicitors to support the proposed new code and a similar toolkit targeted at solicitors working in the alternative legal services market. This would help employers understand the obligations and responsibilities required of the solicitors they employ, and how they can support them, as well helping the solicitors themselves.
- 56 As part of this consultation, we have provided case studies to show how certain proposed obligations and requirements may be met in various scenarios. Our toolkit will include a wide ranging set of case studies covering areas where stakeholders tell us help is most needed. We hope that sharing one or two sample case studies [DN - add link], will encourage different stakeholders to share views on how this kind of support could work best for them.

¹⁴ Rationale document for proposed Codes of Conduct

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57 We welcome views on the case studies we have supplied. We are also keen to explore whether there are any specific provisions in relation to which early guidance or case studies would be helpful. You can comment and contribute to the debate throughout the consultation period - by leaving your comments on the SRA website.

Consultation question:

5) Are there any specific areas or scenarios where you think that guidance and/or case studies will be of particular benefit in supporting compliance with the Codes?

Code for Solicitors

58 The revised Code continues to be drafted in an outcomes focused way. It also incorporates many of the Outcomes from the current Code now set out as standards that solicitors, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs) need to meet. We have prepared tracker documents - one highlighting the provenance of each of the proposed provisions and the other highlighting where current provisions might have moved to or have been replaced [DN add link]. The new Code, however, no longer includes Indicative Behaviours. Earlier feedback from stakeholders suggested that many individuals and firms find their status confusing, with many interpreting them as rigid requirements rather than indicators of ways in which they could achieve or evidence compliance with the Outcomes. You will find further detail on this, including examples, at annex 5.

59 However, where we consider it justified, we propose that some of the current Indicative Behaviours will become standards in their own right. Others will be moved to guidance, or will form the basis of case studies to encourage understanding, provide clarity and support compliance with the new Code. Again, you will find examples in the rationale document at annex 5.

60 Our new approach to drafting means that the core provisions also apply to solicitors working in house, with one section of the Code containing provisions that are only relevant when providing services to the public rather than an employer. We see this to be a vast improvement from the position in our current Code, where in house solicitors were dealt with in add-on provisions at the end of each chapter. Our proposed approach will put them on an equal footing with other solicitors, bound by the same core standards.

61 Whilst drawing on content from the current Code of Conduct, our overarching aim has been to develop a short, focused Code for all solicitors, wherever they work, that is both clear and easy to understand. We think we have achieved this. As previously mentioned,

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we will be running technical webinars during the consultation period to discuss detailed drafting with interested parties.

- 62 We have proposed the drafting detailed in Option 1 below in the proposed new Codes to deal with actual conflict or significant risk of conflict between two or more clients. However, we are interested in views about an alternative version of drafting to reflect a slightly different approach to this issue and that is set out as Option 2 below.

Conflict of interests

Option 1

You do not act in relation to a matter or particular aspect of it if there is a *client conflict* or a significant risk of such a conflict in relation to that matter or aspect of it, unless:

(a) the *clients* have an agreed common purpose in relation to the matter or the aspect of it, as appropriate, and a strong consensus on how that purpose is to be achieved; or

(b) the *clients* are *competing for the same objective* which, if attained, by one *client* will make that objective unattainable to the other *client*.

and the conditions below are met, namely that:

(i) all the *clients* have given informed consent, given or evidenced in writing, to you acting; and

(ii) where appropriate, you put in place effective safeguards to protect your *clients'* confidential information; and

(iii) the benefits to the *clients* of doing so outweigh the risks to the *clients of you acting*.

Option 2

You do not act in relation to a matter or a particular aspect of it if there is a *client conflict* in relation to that matter or aspect of it.

Where there is a significant risk of such a *client conflict* you do not act unless:

(a) the *clients* have given informed consent, given or evidenced in writing, to you acting;

(b) where appropriate, you put in place effective safeguards to protect your *clients'* confidential information; and

(c) should an actual *conflict* materialise you cease to act for one or more of the

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clients, as appropriate.

- 63 The first version broadly replicates the current outcomes. This allows limited exceptions (with effective safeguards in place, informed consent obtained and risk benefit analysis undertaken) to the prohibition against acting for clients in actual conflict or where there is a significant risk of such (for example, where there is a common purpose or clients are competing for the same objective).
- 64 The second version takes an approach that recognises the safeguards around the current exceptions are really about preventing potential conflicts from becoming actual ones. This second version therefore works on the basis that you should never act if there is an actual conflict, and sets out the parameters for when you can act (i.e. with effective safeguards in place, informed consent obtained and ceasing to act if actual conflict arises) where there is a significant risk of conflict.
- 65 ***We welcome views from all stakeholders, but particularly the views of individual solicitors and those working in house as to the extent to which they consider we have achieved these objectives in the draft Code of Conduct for Solicitors (see annex 2).***

Consultation Questions:

- 6) Have we achieved our aim of developing a short, focused Code for all solicitors, wherever they work that is clear and easy to understand?
- 7) In your view is there anything specific in the Code that does not need to be there?
- 8) Do you think that there anything specific missing from the Code that we should consider adding?
- 9) What are your views on the two options set out for handling actual conflict or significant risk of conflict between two or more clients and how do you think they will work in practice?

Code for Firms

- 66 By adopting an outcomes based approach to drafting, we have sought to recognise that firms vary in their form, the services they provide and the clients they have, in the same way that the practice of individual solicitors varies.
- 67 These provisions cover obligations relating to compliance and business systems, co-operation and information requirements, client money and assets, and competent and

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ethical practice, including conflict and confidentiality. We have sought to differentiate as clearly as possible between the two Codes - the systems and procedures that a firm would need to have in place, and the ethical and behavioural standards required of individual solicitors, RELs and RFLs.

68 However, there are some areas of overlap between the two Codes. We consider that there are a number of sections in the Code for Solicitors which apply equally, without amendment, to firms. These are the sections relating to:

- Referrals, introductions and separate businesses
- Conflicts of interest
- Client identification
- Complaints handling
- Client information and publicity.

69 Please note that as the proposed approach to conflict is the same in the Code for Solicitors and the Code for firms, the question around the potential alternative approach set out above applies equally to the Code for Firms.

70 ***We welcome views from all stakeholders, but particularly the views of firms or their managers or compliance officers, as to the extent to which they consider we have achieved these objectives in the draft Code of Conduct for Firms (see annex 3).***

Consultation Questions:

10) Have we achieved our aim of developing a short focused Code for SRA regulated firms that is clear and easy to understand?

11) In your view is there anything specific in the Code that does not need to be there?

12) Do you think that there anything specific missing from the Code that we should consider adding?

13) Do you have any specific issues on the drafting of the Code for Solicitors or Code for Firms or any particular clauses within them?

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Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) roles

- 71 The LSA makes the HOLP (Head of Legal Practice) and HOFA (Head of Finance and Administration) roles a compulsory part of any alternative business structure (ABS). Following a consultation, we extended the roles to all firms in 2012, using the generic term COLP and COFA (compliance officers), on the basis that they were an important way of embedding a compliance culture as we began the move towards outcomes based regulation and moved away from prescriptive rules.
- 72 Although we have received mixed feedback (see below) we are aware that, over time, many firms have found the roles useful in achieving their intended purpose. For example, COLPs and COFAs have told us that the formal role helps give them the authority they need within the firm to ensure compliance by their colleagues. To some extent, the existence of the roles has also created a compliance officer community for passing on good practice and sharing knowledge. In this respect, our annual COLP/COFA conferences are very well attended and receive positive feedback. We also provide regular e-newsletters for compliance officers.
- 73 We have introduced a number of rule changes to reduce the bureaucracy involved in appointments to these roles. The most recent change was in November 2015, when we allowed the deemed approval of lawyer managers as compliance officers in firms with an annual turnover of less than £600,000.
- 74 We therefore intend to retain the COLP/COFA roles for all firms and, as set out above, our proposed Code for Firms reflects this approach. We would like, however, to take this opportunity to gather stakeholder views on how these roles are working in practice, the value of these roles, and how effective they are in a range of business models.
- 75 Discussions with stakeholders about compliance roles (in particular, the COLP role) have brought the following issues to light:
- there is too much responsibility on the COLP (who is responsible for all compliance apart from compliance with the SRA Accounts Rules)
 - the role works best in small firms, where the COLP is also a manager or closely involved in all the firm's activities
 - it may not always work in large firms, where a number of different role holders have management responsibility for a range of functions
 - having a compliance officer role may (and does) sometimes allow others to abdicate responsibility (thus placing complete reliance on the compliance officer).
- 76 We are also interested in gathering views on practical issues regarding the current compliance officer roles, and in particular, the extent to which the role and responsibilities are valuable in terms of real and active compliance. For example, is the

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COLP role too onerous, and if so, how could we improve this? Do you see the role as valuable within an organisation, or does it encourage a 'tick box' approach to compliance?

77 We will be looking to discuss compliance roles more widely with stakeholders in the near future. This consultation paper is therefore just one way of gathering evidence to inform and develop our thinking on the practical function of the compliance officer roles and ensuing compliance mechanisms within SRA regulated firms.

Consultation questions:

14) Do you agree with our intention to retain the COLP and COFA roles for recognised bodies and recognised sole practices?

14 a) In responding to this question, please set out the ways in which the roles either assist or do not assist with compliance.

15) How could we improve the way in which the COLP/COFA roles work or provide further support to compliance officers, in practice?

Section 3: Our revised approach: where solicitors can practise

The current SRA Practice Framework Rules 2011 - the issues

78 The current PFRs were introduced in 2011. They consist of existing rules amended in 2011 to accommodate the new ABS approach. Although amended, these rules carried over restrictions on practice from pre-existing provisions. There was no fundamental review at that time to determine whether these restrictions remained necessary or proportionate before they were transferred across into the PFRs. We have learned a lot in the last five years, and we consider that a large number of the current rules can no longer be justified.

79 The PFRs set out the way in which solicitors, RELs and RFLs may practise. The restrictions on solicitors working in an alternative legal services provider sit here. Under these rules a solicitor, REL and RFL can only provide legal services to the public or a section of the public if they are doing so through an organisation we authorise.

80 The PFRs allow individuals to practise as employees of employers who are not authorised. The rules reflect, in a more restrictive way, the requirements of s15(1)-(4) of the LSA. S15(4) allows employees (who are individually authorised) to carry on reserved legal activities for unauthorised employers provided the employer does not provide reserved legal services to the public or a section of the public as part of its business.

81 Under the current rules, a solicitor cannot provide non-reserved legal services to the public unless permitted to do so. These permissions are narrow and prescriptive, having

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developed over time. We are concerned that they are inflexible and may prevent organisations from responding to consumer demands and from developing in a way that suits their dynamic business models. We have already acknowledged that our rules exceed the requirements of s15 of the LSA¹⁵.

- 82 Accordingly, we are considering removing provisions in the current PFRs that place restrictions (for example to those providing pro bono legal services). This is because we consider that these rules go beyond the requirements of the LSA, and are confusing and difficult to understand. A number of private sector stakeholders have told us that the current rules relating to pro bono work are also preventing them from properly delivering corporate social responsibility programmes.

Flexibility to practise: our proposals and what they mean

Solicitors will be able to provide non-reserved legal services to the public in alternative legal services providers

- 83 The key change in our proposals is to remove the current restrictions on solicitors delivering non-reserved legal services to the public or sections of the public through an alternative legal services provider, while using their solicitor title. We consider that this approach ensures our regulation is targeted, proportionate and consistent with underpinning primary legislation.
- 84 Solicitors who work in alternative legal services providers and decide to provide non-reserved legal services to the public will be subject to the new individual Code. They will be required to make sure that their clients understand whether and how the services the solicitor provides are regulated and about the protections available to them. This aligns with the proposed requirement placed on regulated firms¹⁶ where they will need to tell consumers that they will be covered by the SRA Compensation Fund and Professional Indemnity Insurance (PII) cover. This could be done through various advertising material.
- 85 We consider that these changes will help to strengthen the overall solicitor 'brand'. With increased visibility and accessibility to competent solicitors, consumers can choose a qualified professional when that is what they want or need. Ultimately, the solicitor brand will stand or fall on whether it remains relevant, and that brand will be strengthened if the reputation for excellence is matched by actual consumer experience.

Potential impacts of our reforms on the legal services market

- 86 We think that the following scenarios provide examples of how our reforms may impact on the development of the legal services market:
- a. Alternative legal services providers currently delivering non-reserved legal services through unqualified staff decide to employ solicitors to undertake

¹⁵ In our response to the Legal Services Board consultation on this issue:
http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/2015/SRA_S15_response.pdf

¹⁶ 7.1(b) in SRA Code of Conduct for Firms [2017]

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and/or supervise some or all of the work (this adds an element of quality control and brand enhancement by employing individual solicitors who are subject to SRA regulation)

- b. Existing businesses currently employing in house solicitors start to provide unreserved legal services to the public
- c. Existing businesses delivering other services diversify into legal services and decide to employ solicitors
- d. New firms set up to deliver non-reserved legal services in the alternative legal sector with solicitors undertaking and/or supervising work
- e. In increasing numbers, regulated firms, as they can do now, split off the non-reserved part of their legal services offering into a separate business to better compete with the alternative legal sector on price, whilst still using qualified staff
- f. Firms that are currently regulated and deliver only non-reserved services move out of SRA regulation to better compete with the alternative legal sector on price, whilst still using qualified staff who are personally regulated as solicitors.

87 Our initial view is that of the scenarios above, a. to d. are the most likely to emerge in any numbers. This aligns with our key aim, which is to allow bodies that previously would not have done so to employ solicitors to provide services to the public. These changes would, in our view, represent a positive development within the alternative legal services market. They would prove beneficial not only to a wide range of consumers (by increasing scope of access) but also to the solicitor profession (by providing increased employment opportunities).

88 Scenario e. can already happen under the current arrangements - non-reserved services can be provided by a separate business, or a solicitor can present themselves as a 'non-practising solicitor'. With the changes we propose, solicitors would be holding themselves out transparently as practising solicitors, and they would be subject to all the requirements of the SRA Code of Conduct for Solicitors, RELs and RFLs [2017], thereby providing proportionate consumer protections.

89 The extent to which scenario f. happens will, in practice, be driven by consumer demand and business choices. The following are a few examples of factors that might impact on the appetite to move outside of SRA entity regulation:

- a. desire to maintain the entitlement to carry on reserved legal activities (and potential cost of maintaining a separate business to do so)
- b. attraction of entity regulation to clients and others such as banks and other lenders, insurers and bulk purchasers of legal services

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- c. criteria for being recognised in other jurisdictions
- d. whether and how privilege attracts to the advice.

Consultation questions:

16) What is your view of the opportunities and threats presented by the proposal to allow solicitors deliver non-reserved legal services to the public through alternative legal services providers?

17) How likely are you to take advantage in the greater flexibility around where solicitors can practice as an individual or as a business?

Sole solicitors

- 90 We propose to maintain the current position whereby a sole solicitor (or REL) can only provide reserved legal services for the public or a section of the public as an entity authorised by the SRA or another of the approved regulators under the LSA (for example as a RSP). We considered the alternative of allowing a solicitor to provide such services acting, for example, as an individual in a chambers type environment or as a freelance consultant to an unregulated firm. Our view is that this should be treated as the equivalent to a sole trader and brought within the entity regime. To do otherwise would be to make entity regulation entirely optional even for the provision of reserved legal services. ***We are interested in the views of respondents on this point.***
- 91 In proposing to maintain the status quo, we bore in mind that a relaxation of the current rule could allow firms to create structures that would avoid the requirement for entity regulation altogether, by providing reserved legal services through contracted individual solicitors. In terms of the potential consumer confusion this could create, we thought this outweighed benefits such as flexibility of practice, which could be achieved in other ways, such as a tailored authorisation process for certain types of practice.. We are conscious that this may inhibit the development of solicitors as genuine freelance lawyers and solicitors working in chambers models when delivering reserved activities. We are therefore keen to hear any views on the impact of this restriction and if it is proportionate.

Consultation question:

18) What are your views about our proposal to maintain the position whereby a sole solicitor (or REL) can only provide reserved legal services for the public (or a section of the public) as an entity authorised by the SRA or another approved regulator?

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Use of the 'solicitor' title

- 92 In its recent report ['The Future of Legal Services'](#), the Law Society suggested that solicitors may be more likely in future to give up their title in order to compete in the alternative legal services market. With the changes we propose making to regulation, we do not think that solicitors will need – or should be required - to do so. Solicitors will be able to participate freely in the alternative legal services market under our proposed reform to our regulatory approach.
- 93 If practising as a solicitor (within or outside of the alternative legal services market), an individual will need to hold a current practising certificate. This will help bring to an end the situation (which is potentially confusing to consumers) where solicitors who are providing non-reserved services to the public, describe themselves as 'non practising solicitors'. They will be a practising solicitor, and will be holding themselves out, and marketing themselves, transparently as one. This reflects the provisions in sections 1 and 1A of the Solicitors Act 1974 which state that an individual must not “act as a solicitor” (i.e. hold themselves out as a solicitor or do the kinds of things only solicitors can do) without having a practising certificate.
- 94 ***We will be doing further work during the consultation period as guidance to help solicitors to understand the requirements of the Act.***

Special bodies

- 95 We have also sought to design our regime relating to regulated firms in a way that provides a flexible framework for all bodies delivering reserved legal services. In [Looking to the Future](#), we made particular reference to the regulation of charities and not for profit bodies (classed in the LSA as special bodies), which are currently entitled to deliver reserved legal services, under transitional arrangements, within a framework that reflects their unique status.
- 96 Through our review, we aim to develop a framework that is flexible enough to allow the LSB to consider ending those transitional arrangements, and to bring special bodies within SRA entity regulation. In terms of special bodies, we propose to develop a framework that is broadly similar to the approach we have previously taken to the regulation of multidisciplinary practices (MDPs) with entity regulation applying only where appropriate and proportionate. We believe that such an approach would enhance consumer protections for some of the most vulnerable consumers of legal services.
- 97 We will work closely with the Legal Services Board and special bodies to develop and take forward our proposed approach. We intend to be in a strong position to license special bodies by the time our reforms are implemented. In the meantime we are keen to speak to, and engage with, special bodies who may want to explore SRA authorisation with us. We invite special bodies to engage with us both face to face and through our

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SRA Innovate programme, in order to help us identify which of our existing regulations are most, or particularly, problematic.

98 ***We have also published a statement on our SRA Innovate webpage alongside this consultation [DN add link], which sets out guidance for any special bodies that may wish to be authorised by the SRA whilst the transitional arrangements remain in place.***

Requirement to be "qualified to supervise"

99 We are considering whether we need to make changes to Rule 12 of the current PFRs. This rule requires an individual to be 'qualified to supervise' in certain circumstances (e.g. when practising as a sole practitioner). In order to prove that they are qualified to supervise, the solicitor must have (i) undertaken training as specified by the SRA (currently 12 hours on management skills); and (ii) been entitled to practise as a lawyer for at least 36 months within the past ten years. Changes could potentially allow a newly qualified solicitor to set up in business as a sole practitioner.

100 We question whether this prescriptive rule is necessary given that:

- There are other regulations designed to address the risk. For example, our Authorisation Rules state that we can take into account whether the applicant has sufficient skills or knowledge in relation to the management and control of a business that provides regulated legal services
- Our emerging data analysis suggests that newly qualified solicitors do not present a significant risk to the delivery of a proper standard of service
- Our proposed Code for Firms contains systems and controls to ensure the effective management of organisations we authorise
- Five years on from the introduction of the SRA Handbook, our approach to authorisation is now more sophisticated, comprehensive, and better equipped to identify and prevent consumer detriment.

101 We also question whether the current rule is effective. We do not consider that length of time qualified is a robust measure of competence of an individual or of their ability to supervise the work of another effectively. In any event, being entitled to practise is not the same thing as actually practising - there is no requirement for the time to be concurrent (or even recent).

102 We know from education and training reform work that firms have varied approaches to learning and development to support career progression. In this context, we removed CPD requirements based on undertaking a set amount of training¹⁷. Similarly, there is a strong rationale for arguing that the requirement to undertake 12 hours of (unspecified) management training before being qualified to supervise is likely to be both too prescribed and yet too vague to add any real value to the regulatory framework.

¹⁷ <http://www.sra.org.uk/toolkit/>

Consultation Question:

19) What is your view on whether our current 'qualified to supervise' requirement is necessary to address an identified risk and/or is fit for that purpose?

Lawyers - Exempt European Practices (EEPs) and Registered Foreign Lawyers

103 The EEP¹⁸ regime was brought into force on 1 April 2015 to remove barriers in our regulation restricting European law firms from setting up in England and Wales without restructuring home country delivery models or creating a separate English practice if they are not providing reserved legal activities. It also permitted RELs to practice in this type of unregulated entity providing non reserved legal services to members of the public.

104 The introduction the EEP regime has been in some respects a forerunner for our current proposals. It enabled RELs to work in this specific category of unauthorised entities providing unreserved activities to the public subject to certain conditions. Our emerging view is that retaining the EEP regime to enable RELs to provide unreserved legal services through an EEP would no longer be necessary as we plan to remove restrictions on authorised individuals from providing non reserved legal services to the public. Retaining the EPP regime would simply duplicate this permission.

105 We will be engaging with RELs on the proposed approach to consider the feasibility of removing the specific EEP registration process and the suitability of our proposals for these particular businesses.

106 We are also keen to hear from Registered Foreign Lawyers and those firms that employ them as to the impacts of our proposals. It is important that we understand whether our proposals present challenges for RELs, RFLs and the organisations that employ them. We have a number of engagement activities planned to do this, for example, roundtable discussions and webinars

¹⁸ We define an EEP as any type of structure in which lawyers are permitted to practise in their home Directive state, which is regulated as a lawyer's practice in that state and has its main place of business in a relevant state other than the UK. In addition, an EEP must not be owned by practising lawyers of England and Wales and it cannot carry on any reserved legal activities

Section 4 - Handbook Reform: what it means for consumer protection

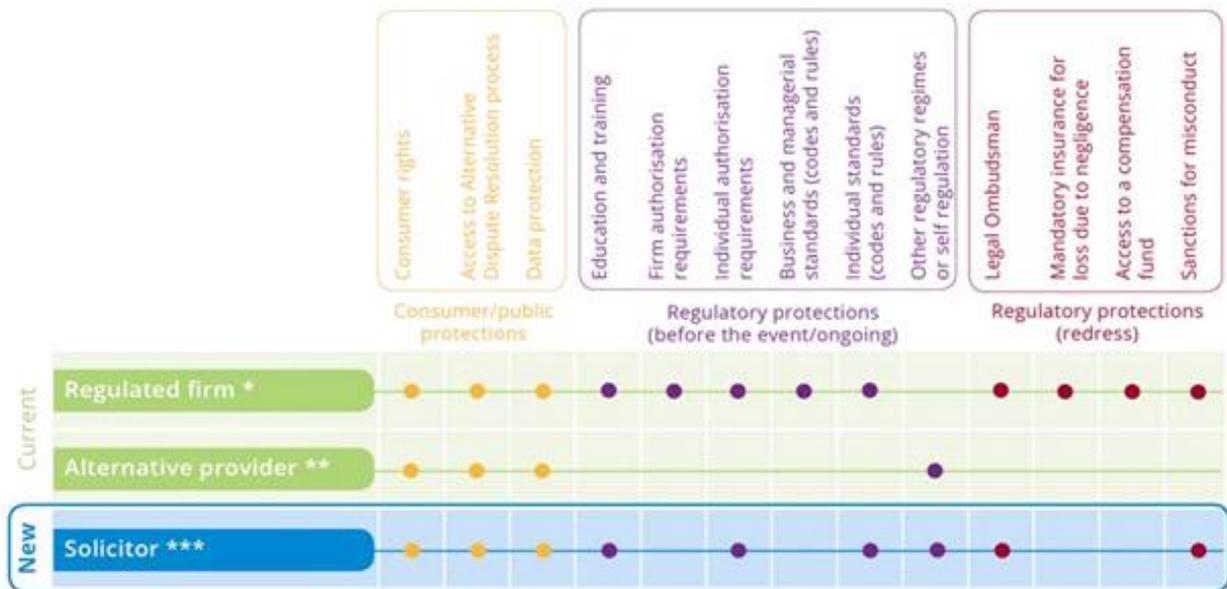
Regulatory protections under the new arrangements

107 In the diagram below, we set out the protections currently available to clients of SRA regulated firms compared to clients of alternative legal services providers. We then set out the additional protections that would be available to clients of alternative legal services providers under our proposal to allow solicitors, for the first time, to deliver non-reserved services to the public within those providers. The diagram shows that this adds a level of regulatory protection to the legal services market.

108 Solicitors would bring their training and qualifications, ethical behaviour and commitment to competence to alternative legal services providers and their clients. The Code for Solicitors would apply to them, as it would any other individual acting as a solicitor.

A changing landscape for solicitors providing legal services

This table sets out the impact on public protection from our proposals to free up solicitors to provide some legal services working in a business that is not regulated by the SRA or another approved regulator.



* The full range of legal advice provided by a Solicitor (or other authorised person) working in a firm authorised by the SRA or another approved regulator. This advice includes *reserved* legal activities - the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.

** Legal advice that is *not reserved* provided by a legal advisor working in an alternative legal services provider(ie one that has not been authorised by the SRA or any other approved regulator or another legal services regulator).

*** Legal advice that is *not reserved* provided by a Solicitor working in an alternative legal services provider.

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109 As now, there will continue to be additional regulatory protections for clients of SRA regulated firms. These include access to our compensation fund and assurance that the firm is bound by our minimum PII requirements.

110 As part of our policy development, we considered whether we could attach similar protections to individual solicitors wherever they work under our proposals. We concluded that to do so would be disproportionate, unworkable, or both. It would be important, therefore, for solicitors to be very clear which consumer protections apply to their clients (and we will support them to do so by setting out the information requirement in the Codes and including accompanying guidance and case studies).

111 Our policy thinking that led to us decide that certain protections would not apply to solicitors working in the alternative legal services market are set out below.

Existing consumer protections

112 Consumer protections already exist for the alternative legal services market, and they are improving. The Consumer Rights Act 2015 (CRA) provides consumers with statutory rights: for services to be performed with reasonable care and skill; for consumers to pay a reasonable price for a service; and for services to be performed in a reasonable time. Alternative Dispute Resolution (ADR) is now also available to all businesses to help when a dispute cannot be settled directly. Prior to the CRA, ADR had only been available in certain sectors. In light of these developments, we have needed to review this area of our regulation.

113 As a result of our proposed reforms, we consider that clients will be more likely to have a wider choice of and have better access to solicitors. By allowing solicitors to work in the alternative legal services market, with the individual protections that apply to all solicitors, we are adding to the protections available to consumers. Clients who want or need the additional protections that are guaranteed with SRA regulated firms can still access those and will be able to continue to do so in the future.

114 Research suggests that many consumers are unclear about the protections available to them. Nevertheless, almost all consumers with serious problems do navigate to the right sort of lawyer. Rather than expecting consumers to understand regulation or its structure, they need to have signals and signposting that help them to choose and use - such as brands. This includes the solicitor brand, the "regulated by the SRA" brand and consumer facing brands. Information provided by their legal advisor and required in our proposed Codes will help inform choices. Looking forward, access to information and services, like comparison sites and other intermediaries, will also play an increasingly vital role.

115 Our proposed drafting in the Codes will therefore require that both solicitors and regulated firms help inform consumers as to the level of protections available to them. In relation to client information and publicity, in the individual and firm Codes we have included a specific standard which states that "You ensure that clients understand whether and how the services you provide are regulated and about the protections available to them".

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116 Solicitors working in unregulated firms will be expected to be clear with their clients about what protections they have in relation to PII and other redress mechanisms. We are also considering whether regulated firms should be required to make explicit positive references relating to access to the Compensation Fund in their marketing materials.

117 While it could be argued that choice brings with it the risk of confusion, this risk already exists in the legal services market because the LSA allows alternative legal services providers to provide non-reserved legal services to the public; this is done through a plurality of delivery models.

118 As part of our approach, we want to make it clear to consumers that use of the term “solicitor” or “solicitors firm” is reserved to those authorised by us only. We will emphasise that firms not regulated by us will not be able to use the term “solicitor” in their firm name and will not be able to market themselves as “solicitor firms”. This mitigates the risk that consumers are misled as to the level of protection provided. The consumer guides we produce will support any proposed rules. We should be clear though that, just as happens currently, we cannot prevent an unauthorised firm from advertising its services on the basis that it employs, or is led or owned by individuals working as solicitors.

Consultation Question:

20) Do you think we should require SRA regulated firms to display detailed information about the protections available to consumers?

How we are working to help consumers choose and use legal services

119 Our market analysis work, impact assessments and research findings point increasingly to consumer information as a key component of our reform programme. This is also a key strand of the current Competition and market Authority's market study¹⁹. We are already working on shorter term improvements for consumers in this area, but also have a series of longer term activities in scope:

- rolling out a programme of communications and engagement work to get key messages to consumers about solicitors and legal services;
- delivering a programme of SRA consumer engagement during 2016 as part of the wider consultation approach; and
- improving the accessibility of SRA regulatory data for consumers.

¹⁹ <https://www.gov.uk/cma-cases/legal-services-market-study>

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120 We are improving the content of our website, and the Legal Choices consumer website²⁰, to provide more information on consumer rights, and we are expanding content to include information about the alternative legal services market. We are undertaking a programme of work to find out what information consumers most need to make good decisions about legal services, and how they want to access it - including holding focus groups, and undertaking a bespoke consumer survey.

121 We are also improving access to our data. Whilst this is an ongoing project, we have already made some short term improvements with the recent addition of the [Law Firm Search](#) facility to our website, and a new process for data re-users (like comparison websites), which went live in April 2016. We will continue to engage with stakeholders during the coming year to develop a new SRA data model, giving the market the regulatory information it needs.

Consultation Question:

21) Do you agree with the analysis in our initial Impact Assessment?

22) Do you have any additional information to support our initial Impact Assessment?

Client Money

122 In our original hypothesis published in [Looking to the Future](#), we noted that we would consider attaching some restriction to the holding of client money by individual solicitors where they were working for an alternative legal services provider. As part of our policy development work, we considered whether there were any mechanisms by which solicitors working in these businesses could personally hold client money - subject to certain restrictions.

123 The SRA Accounts Rules 2011 currently set out the arrangements for holding and handling client money within authorised firms. These are business level controls. Firms outside of SRA regulation are of course able to hold and handle money for and on behalf of clients without complying with these rules. This does not change if they employ a solicitor (and we are not proposing that it should).

124 We therefore consider that it would be artificial and confusing to have different obligations on an individual solicitor compared to the business in which they are working. The compliance responsibility would place an unrealistic, disproportionate, and impractical burden on the individual solicitor. Such an approach is at odds with the type of flexible regulation we are developing. In any event, any restrictions that we set on the solicitor can simply be avoided by the business holding the money in its own name.

²⁰ <http://www.legalchoices.org.uk>

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- 125 In any event, issues relating to client money will generally be a firm based issue, and we do not have jurisdiction over these firms' systems and controls, as they will sit outside SRA regulation. Seeking to impose obligations on the alternative legal services providers as a condition of them employing solicitors would a) extend our regulatory reach unnecessarily and b) be a major deterrent to employing solicitors.
- 126 We therefore propose that individual solicitors working for an alternative legal services provider will not be permitted to hold client money separately in their own name. We have therefore included a provision in the Code for Solicitors that solicitors who are working outside a LSA authorised firm do not personally hold client money. Some in-house solicitors and solicitors in special bodies have indicated that they currently hold client money as individuals. We would like to hear more about the circumstances where this might happen to help understand the potential impact of our proposals in this area.
- 127 It should be noted that we are consulting separately on our proposals for the Accounts Rules and on a simplified definition of client money. The proposed definition is based around money held by the firm in connection with the delivery of legal services for a client or money held on behalf of a third party as well as when acting as a trustee. This includes money paid by the client for payments to other parties for which the client remains liable, such as Stamp Duty Land Tax. Under the proposals, all of the firm's fees, as well as disbursements for which the solicitor is liable (for example, counsel fees), will be treated as the firm's money.
- 128 The proposed change in definition, if implemented, will mean that the restrictions in the Code for Solicitors would not apply to payments for fees or payments for which the solicitor is liable.
- 129 We have also included a provision that individual solicitors (wherever they are working) safeguard money and assets entrusted to them by clients and others (during the course of their work). We have deliberately drafted this provision to safeguard money and assets entrusted by clients to be wider than the proposed definition of client money. This would ensure that where the firm holds client money, or handles assets belonging to their clients, the solicitor will be responsible for any personal misconduct relating to those assets whether or not the firm is authorised by us.

Consultation Questions:

23) Do you agree with our approach that solicitors working in an alternative legal services provider should not be allowed to hold client money in their own name?

24) What are your views on whether and when in house solicitors or those working in Special Bodies should be permitted to hold client money personally?

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SRA Compensation Fund

130 As part of our policy development, we considered whether clients of solicitors working in alternative legal services providers should be able to make a claim on the SRA Compensation Fund in certain limited circumstances - and, in particular, where there had been losses to the consumer as a result of dishonesty on the part of the solicitor.

Our proposals and position

131 Following careful consideration, our proposal is that clients of solicitors outside of authorised firms will not be able to make a claim on the Compensation Fund in any circumstances. We consider it disproportionate to require those solicitors to contribute to the fund where they don't hold client money so therefore we have taken the view that we should remove all claims. Further, we have identified three major barriers to allowing clients of solicitors working in alternative legal services providers to make a claim on the Compensation Fund.

132 First, claims to the Compensation Fund are generally linked to either breaches of the SRA Accounts Rules 2011, or misuse of client money. As the Accounts Rules do not apply to firms not regulated by the SRA, and our proposal is that solicitors working in alternative legal services providers do not hold client money, it would not be appropriate for the Compensation Fund to apply to clients of these solicitors - it would be disproportionate to require those solicitors to contribute to the Compensation Fund when they do not hold client money.

133 Secondly, we consider that if clients of solicitors in alternative legal services providers were entitled to make a claim to the Compensation Fund, it is very likely that it would become the first 'port of call' for insurers or clients of the employer. It would also raise a number of complex questions about the personal responsibility of the solicitor in relation to any losses.

134 Thirdly, although we can take regulatory action against the individual solicitor, and will not hesitate to do so where required, because we do not have direct powers over the alternative legal services provider²¹ it will be more difficult, in practice, to intervene. There will also be limits on our ability to manage safely the distribution of any money and assets that we take control of, or to protect the Compensation Fund.

135 Clients of these solicitors will be protected by existing consumer protection legislation, and solicitors will have (under our proposed arrangements) an obligation to provide information to their clients about their complaints handling system and any access to it. The statutory right to complain to the Legal Ombudsman remains for the service provided by the individual solicitor as an authorised person (whether or not the entity is also authorised) and the solicitor will be required to inform clients of all their

²¹ We will not be able to take regulatory action against the alternative legal services provider, given that they fall outside our regulation.

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rights in this regard. The client can also report any alleged misconduct relating to the individual solicitor to the SRA.

136 It will be the responsibility of the solicitor to advise clients of the regulatory protections they are entitled to, and where appropriate, to inform clients explicitly that they are not eligible to make a claim on the Compensation Fund.

137 If we choose to adopt this approach, we will need to review our approach to calculating contributions to the Compensation Fund. It would not be appropriate, in our view, for solicitors working in alternative legal services providers to pay for those purposes of the Fund that their clients do not benefit from.²²

138 ***Subject to the outcome of this consultation, we will look to include this proposal in further planned consultations on the Compensation Fund and fees, which we are currently planning to launch in Autumn 2016.***

Consultation Question:

25) Do you agree with our proposal that the SRA Compensation Fund should not be available to clients of solicitors working in alternative legal services providers?

25a) If not, what are your reasons?

Professional Indemnity Insurance (PII)

Our proposals and position

139 We have considered whether it would be appropriate to maintain a requirement on a solicitor providing services to the public within an alternative legal services provider to meet minimum terms and conditions for PII set by the SRA.

140 However, we are of the view that such a requirement would blur the clear line between individual and entity regulation which underpins our proposed regulatory approach. In the revised Code though, there will be a provision stating that "you ensure that **clients** understand whether and how the services you provide are regulated and about the protections available to them".

141 In practice though, legal services providers generally choose to obtain insurance to ensure that they and their employees are protected from liability. It would not be

²² Section 36A(9) of the Solicitors Act 1974 - <http://www.legislation.gov.uk/ukpga/1974/47/section/36A>

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practicable, in our view, to expect the solicitor to be able to separate his or her own practice from the rest of the firm's business, and then decide the level of insurance that is appropriate. Such a requirement would be a significant deterrent to solicitors working in alternative legal services providers and would impose potentially disproportionate restrictions on practice - something we are seeking to avoid. To take just one example, it would be unclear how a solicitor in a large accountancy firm who may be working as part of a team is supposed to separate out their own insurance requirements from those of their team.

- 142 We will leave it to the individual solicitor to evaluate the risk in terms of whether their work is covered by any appropriate insurance. Individual solicitors in alternative legal services providers will more than likely wish to have PII cover in place through their employers. We do not think that it is appropriate to make this a separate regulatory requirement on the individual.

Consultation Questions:

26) Do you agree with our proposal not to make individual PII cover for solicitors a regulatory requirement on the individual solicitor?

27) Do you think that there are any difficulties with the approach we propose, and if so, what are these difficulties?

Professional indemnity insurance in special bodies

- 143 Entities regulated by the SRA are required to have indemnity insurance of a minimum of £2 million with a qualifying insurer that meets minimum terms and conditions. The purpose of the cover is to provide clients with a basic level of protection in the event that an entity is negligent or dishonest which results in the claimant suffering a loss.

- 144 Under the current Practice Framework Rules (PFR's) solicitors and RELs employed by special bodies must have a 'reasonably equivalent' level of cover to that required by the SRA Indemnity Insurance Rules. This provides clients of special bodies with equivalent protection to that provided to clients of SRA regulated entities.

- 145 We are considering whether to retain that provision for special bodies because unlike the other 'unregulated' entities, special bodies can provide reserved legal services to the public. In those circumstances it would be reasonable to expect that consumers who use special bodies/non-commercial bodies are entitled to the protection that PII provides in the same way as clients of traditional law firms.

- 146 We propose that we maintain insurance requirements on solicitors in special bodies when they provide reserved legal services to the public or a section of the public. We do

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not propose to impose insurance requirements if they are only delivering non reserved work. This would therefore be a relaxation of current arrangements, rather than an additional burden.

147 However, we are seeking views as to what insurance requirements we should impose and the meaning of the current 'reasonably equivalent' provision in practice. We will need to consider whether we can be flexible in considering alternatives to the current standard requirements, whether that is related to the level of cover or the terms and conditions of the insurance (taking into account the nature of the organisation, the type of work it undertakes, the other obligations to which it is subject, and the risk it presents.

148 This approach would have the advantage of removing the need to have waivers in place to allow special bodies to have a lower level of PII than would normally be required under the minimum terms and conditions (MTC). We could, for example, allow lower levels of cover automatically where conveyancing or probate services are not being provided (special bodies are very unlikely to provide these services).

149 ***We are interested in discussing this issue with special bodies (and other interested stakeholders) as part of the consultation process. In particular, we are keen to explore the issue of alternatives to 'reasonably equivalent' levels of insurance.***

Consultation questions:

28) Do you think that we should retain a requirement for Special Bodies to have PII when providing reserved legal activities to the public or a section of the public?

29) Do you have any views on what PII requirements should apply to Special Bodies?

Legal professional privilege (LPP) - position in relation to alternative legal services providers

150 At common law, LPP does not apply to any professional other than a qualified lawyer - a solicitor or barrister or an appropriately qualified foreign lawyer. This was confirmed by the Supreme Court in 2013²³.

151 Statute extends the reach of privilege to SRA regulated firms, and sets out the position as to when advice provided to clients attracts LPP. Advice provided by a recognised body, for example, will attract privilege in the same way as if the advice had

²³ *R (on the application of Prudential plc) v Special Commissioner of Income Tax* [2013] UKSC 1; [2013] 2 AC 185 (23 January 2013)

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been provided by a solicitor (as an authorised person)²⁴. Equally, in the case of alternative business structures, advice provided to clients will attract privilege when that advice is provided to clients either by a regulated lawyer or by those who are under the supervision of one²⁵.

152 Whether LPP would apply where a solicitor provides legal advice to a client of an alternative legal services provider is a matter of substantive law. We have no power to affect the ambit of this substantive law.

153 It follows from recent case law that legal advice provided by a solicitor employed by, for example, an alternative legal services provider (i.e. not authorised by the SRA or any of the other approved regulators) "X", which goes out to the client, as it very likely would, as advice from X, will not be privileged. This is because, irrespective of whether the advice was prepared by a solicitor, the firm would not be covered by the statutory provisions referred to in paragraph 148 above, such as to bring its advice within the ambit of legal professional privilege.

154 It is theoretically possible that a lawyer working in an alternative legal services provider could in a particular case contract to provide legal advice in his own name to a client. Although such circumstances seem rather unlikely in practice²⁶, if such circumstances did arise, then privilege might apply to the solicitor's advice.

155 So, where a solicitor working in such a firm prepares advice for that firm and provides that advice to a client of the firm, no legal professional privilege will arise. In such a firm, even if all the partners are practising solicitors (i.e. authorised persons), where they have chosen to be an unauthorised entity not carrying on reserved legal activities ("scenario f.") then advice provided to clients which goes out in the name of that entity is not likely to attract privilege. Any advice given by the firm to provide legal advice to its clients will of course be confidential to the client, but that advice given by that firm will not be protected from inspection on the basis of legal professional privilege. It is therefore down to the individual solicitor to make clear to their clients what level of protections that client has. This obligation is set out in the new Code for Solicitors.

Entity regulation - the threshold approach

156 For the reasons set out above, we do not consider it likely that a significant number of firms would look to take advantage of the proposed reforms by leaving SRA regulation. The main aim of our reforms is to benefit consumers and the profession by providing new opportunities for solicitors in the wider market. We recognise, however, that some firms may choose to do so. These firms would still offer important protections for consumers (for example, by virtue of individual solicitors being subject to the Code and clients still having recourse to the Legal Ombudsman).

²⁴ paragraph 36(1) of Schedule 2 to the Administration of Justice Act 1985

²⁵ ss190(3) and (4) LSA 2007

²⁶ e.g. issues as to professional indemnity insurance cover would likely arise

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157 We consider that it is important to maintain a clear distinction between SRA regulation of the solicitor at an individual level and the requirement for SRA regulation of the entity and that this is understood by clients. In response to this, solicitors that come together to form alternative legal services providers delivering non reserved legal services will not be able to use the term 'solicitor' or 'solicitors' in the firm title and will be under a duty to ensure that clients are not misled about the regulatory position.

158 We do not consider that such firms should be disadvantaged, compared to other alternative legal services providers that employ solicitors. Accordingly, we do not think that we should impose additional restrictions on the way that solicitors should be required to work together when providing non-reserved legal services (for example, as several solicitors in partnership) such as introducing a threshold requirement which triggers the need for regulation.

159 Although some other regulators (not legal services regulators) choose to apply a 'threshold' which triggers the requirement for the firm to be regulated- for example, where any firm has more than 50% of principals who are regulated individuals - our view is that a threshold approach is not desirable for the following reasons:

- The LSA prescribes the circumstances in which entities must be authorised for the carrying on of reserved legal activities but does not prohibit alternative legal services providers from carrying out non-reserved activities;
- Any additional threshold would be arbitrary and would not necessarily make the situation any clearer to clients. For example, it would be difficult to explain why we regulated an entity with 51 solicitor partners in a 100-partner firm, but not one with 50 solicitor partners.
- Such a limit would create a clear market disadvantage for solicitors working together, compared to other entities that would be able to employ solicitors without the extra burdens of entity regulation.

Consultation Questions:

30) Do you agree with our view that it is not desirable to impose thresholds on non-SRA regulated firms, which are mainly or wholly owned by SRA authorised solicitors?

31) Do you have any alternative proposals to regulating entities of this type?

Intervention - position in relation to individual solicitors and regulated firms versus unregulated firms

Individual solicitors and regulated firms

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160 We can intervene into an individual solicitor's practice, into a firm regulated by us, or into both²⁷.

161 A solicitor may have an identifiable individual practice within a regulated firm, but it may be that intervention into the regulated firm alone is sufficient to protect clients and the public. However in appropriate cases, we may choose to intervene only into an individual solicitor's practice, leaving other individuals and the firm to continue as usual - although this is likely to be quite rare²⁸. Any decision on how to approach intervention will be fact sensitive; factors we will consider include why we need to intervene and how we can best deal with risks to clients and to the public.

162 It is to be noted that although we have no power to intervene into a firm that we do not regulate, we *can* intervene into the individual solicitor's practice within that unregulated entity if the relevant basis for doing so is made out²⁹. In practice this could be a rather complex matter, as there may be, for example, issues as to what belongs to the individual solicitor rather than the firm when it comes to intervention and the concomitant powers to seize files and/or other assets. For example, there may be a lack of clarity as to who holds files where the solicitor has been working with other colleagues within the unregulated entity. Additionally, the firm, over which the SRA has no power to intervene, will likely hold the client money.

163 The SRA has, however, other statutory powers it can rely upon: it can require information to be provided and documents to be produced, and these powers could prove useful in the context of ensuring an unregulated firm's assistance in an SRA investigation³⁰.

Consultation question:

32) Do you have any views on our proposed position for intervention in relation to alternative legal services providers, and the individual solicitors working within them?

SRA regulated activity within a recognised body or a recognised sole practice (RSP)

164 The current position is that the SRA regulates all activity within a recognised body or RSP. This means that the SRA Principles, SRA Code of Conduct, SRA Accounts Rules and Compensation Fund and PII requirements apply to that activity.

²⁷ Our powers to intervene in this way and their scope are set out in section 35 and Schedule 1 to the Solicitors Act 1974 (relating to individual solicitors) and paragraph 32(1) of Schedule 2 to the Administration of Justice Act 1985 (relating to a recognised body)

²⁸ It happened in the case of *Simms v Law Society [2005] EWCA Civ 849*

²⁹ See section 35 and Schedule 1 to the Solicitors Act 1974

³⁰ Sections 44B and 44BB of the Solicitors Act 1974

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165 This is the case even where the activity is 'non legal' activity, or where it is activity regulated by the Financial Conduct Authority (FCA), or where the activity is carried out by an Insolvency Practitioner.

166 The position for a recognised body or RSP contrasts with the case of an ABS where the default position is that the SRA only regulates 'legal activity'³¹. Under the terms of the multidisciplinary practice (MDP) arrangements for ABSs³², we can also agree to exclude some non-reserved legal activity from 'regulated activity' on the terms of a licence. This is where that activity is: (a) carried out under suitable external regulation (e.g. by one of the chartered accountancy regulators); or (b) performed as a subsidiary but necessary part of the activity of a non-legal professional whose main activity does not involve the provision of legal advice or services. For example, this might be a surveyor whose advice touches on issues of planning law.

167 As part of the separate business rule consultation in 2014³³, we asked respondents whether we should explore the possibility of achieving similar arrangements for recognised bodies – with the option of some activities being excluded from SRA regulated activity.

168 Responses were mixed, with some considering that this would be a sensible liberalisation of the market with others such as the Law Society wishing to maintain the principle that all work within a solicitor's firm should be SRA regulated.

169 We stated that we would return to this issue in this consultation. Having considered the matter further, we do not propose to alter the current position. In other words, all activity within a recognised body or RSP will continue to be SRA regulated.

170 Our reasons for maintaining this position are as follows:

- A key driver for the development of the MDP Policy has been the duplication and conflict between the provisions of different regulators of the entity. However, a solicitor's firm will not generally be regulated as an entity other than by the SRA. Taking accountancy as an example, neither ICAEW nor ACCA will regulate an entity unless at least 50% of the partners or controlling members are chartered accountants. Within a recognised body or RSP, this issue will therefore not arise.
- Creating boundaries between SRA regulated and non-regulated activities with a recognised body or RSP could lead to unnecessary complication and consumer confusion.
- Crucially, our recent reforms to the separate business rule and the proposal to allow solicitors to practise in those separate businesses mean that recognised

³¹ As defined in s12 LSA

³² <http://www.sra.org.uk/sra/policy/policies/multi-disciplinary-practices-sept-2014.page>

³³ See <http://www.sra.org.uk/sra/consultations/separate-business-rule.page>

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bodies and RSPs will now have the flexibility to create vehicles to deliver joint services with other professions should they wish to do so.

Consultation Question:

33) Do you agree with our proposal that all work within a recognised body or an RSP should remain regulated by the SRA?

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Consultation questions

No	Question
1	Have you encountered any particular issues in respect of the practical application of the test (either on an individual basis, or in terms of business procedures or decisions)?
2	Do you agree with our proposed model for a revised set of Principles?
3	Do you consider that the new Principle 2 sets the right expectations around maintaining public trust and confidence?
4	Are there any other Principles that you think we should include, either from the current Principles or which arise from the newly revised ones?
5	Are there any specific areas or scenarios where you think that guidance and/or case studies will be of particular benefit in supporting compliance with the Codes?
6	Have we achieved our aim of developing a short, focused Code for all solicitors, wherever they work which is clear and easy to understand?
7	In your view is there anything specific in the Code that does not need to be there?
8	Do you think that there anything specific missing from the Code that we should consider adding?
9	What are your views on the two options for handling conflicts of interests and how they will work in practice?
10	Have we achieved our aim of developing a short focused Code for SRA regulated firms which is clear and easy to understand?
11	In your view is there anything specific in the Code that does not need to be there?
12	Do you think that there anything specific missing from the Code that we should consider adding?
13	Do you have any specific issues on the drafting of the Code for Solicitors or Code for Firms or any particular clauses within them?
14	Do you agree with our intention to retain the COLP and COFA roles for recognised bodies and recognised sole practices? In responding to this question, please set out the ways in which the roles either assist or do not assist with compliance.

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15	How could we improve the way in which the COLP/COFA roles work or to provide further support to compliance officers, in practice?
16	What is your view of the opportunities and threats presented by the proposal to allow solicitors deliver non-reserved legal services to the public through alternative legal services providers?
17	How likely are you to take advantage in the greater flexibility about where solicitors can practice as an individual or as a business?
18	What are your views about our proposal to maintain the position whereby a sole solicitor (or REL) can only provide reserved legal services for the public (or a section of the public) as an entity authorised by the SRA (or another approved regulator)?
19	What is your view on whether our current 'qualified to supervise' requirement is necessary to address an identified risk and/or is fit for that purpose?
20	Do you think we should require SRA regulated firms to display detailed information about the protections available to consumers?
21	Do you agree with the analysis in our initial Impact Assessment?
22	Do you have any additional information to support our initial Impact Assessment?
23	Do you agree with our approach that solicitors working in an alternative legal services provider should not be allowed to hold client money in their own name?
24	What are your views on whether and when in house solicitors or those working in Special Bodies should be permitted to hold client money personally?
25	Do you agree with our proposal that the SRA Compensation Fund should not be available to clients of solicitors working in alternative legal services providers? If not, what are your reasons?
26	Do you agree with our proposal not to make individual PII cover for solicitors a regulatory requirement on the individual solicitor?
27	Do you think that there are any difficulties with the approach we propose, and if so, what are these difficulties?

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28	Do you think that we should retain a requirement for Special Bodies to have PII when providing reserved legal activities to the public or a section of the public?
29	Do you have any views on what PII requirements should apply to Special Bodies?
30	Do you agree with our view that it is not desirable to impose thresholds on non-SRA regulated firms, which are mainly or wholly owned by SRA authorised solicitors?
31	Do you have any alternative proposals to regulating entities of this type?
32	Do you have any views on our proposed position for intervention in relation to alternative legal services providers, and the individual solicitors working within them?
33	Do you agree with our proposal that all work within a recognised body or an RSP should remain regulated by the SRA?

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How to respond to this consultation

Online

Use our online consultation questionnaire [{insert link}](#) to compose and submit your response. (You can save a partial response online and complete it later.)

Email

Please send your response to consultation@sra.org.uk. You can download and attach a Consultation questionnaire [\[insert link\]](#).

Please ensure that

- you add the title "SRA Looking to the Future" in the subject field,
- you identify yourself and state on whose behalf you are responding (unless you are responding anonymously),
- you attach a completed About You form,
- you state clearly if you wish us to treat any part or aspect of your response as confidential.

If it is not possible to email your response, hard-copy responses may be sent instead to:

Solicitors Regulation Authority
Regulation and Education - Policy - Handbook 2017
The Cube
199 Wharfside Street,
Birmingham,
B1 1RN

Deadline

Please submit your response by 21 September 2016.

Confidentiality

A list of respondents and their responses may be published by the SRA after the closing date. Please express clearly if you do not wish your name and/or response to be published. Though we may not publish all individual responses, it is SRA policy to comply with all Freedom of Information requests.

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Draft SRA Code of Conduct for Solicitors, RELs and RFLs [2017]

SRA Code of Conduct for Solicitors, RELs and RFLs [2017]

Introduction

The SRA Principles comprise the fundamental tenets of ethical behaviour that we expect all those that we regulate to uphold. This includes you, as well as authorised firms and their managers and employees. The Principles are as follows:

You:

1. uphold the rule of law and the proper administration of justice
2. ensure that your conduct upholds public confidence in the profession and those delivering legal services
3. act with independence
4. act with honesty and integrity
5. act in a way that encourages equality, diversity and inclusion
6. act in the best interests of each client

The Code of Conduct describes the standards of professionalism that we, the SRA, and the public expect of individuals (solicitors, registered European lawyers and registered foreign lawyers) authorised by us to provide legal services. They apply to conduct and behaviour relating to your practice, and comprise a framework for ethical and competent practice which applies irrespective of your role or practice setting; although section 8 applies only when you are providing legal services to the public or a section of the public.

You must exercise your judgement in applying these standards to the situations you are in and deciding on a course of action, bearing in mind your role, responsibilities and the nature of your clients and areas of practice. You are personally accountable for compliance with the Code - and our other regulatory requirements that apply to you - and must always be prepared to justify your decisions and actions. Serious breach may result in our taking regulatory action against you. A breach may be serious either in isolation or because it comprises a persistent failure to comply or pattern of behaviour.

The Principles and Codes are underpinned by our Enforcement Strategy, which explains in more detail our approach to taking regulatory action in the public interest [[Link](#)].

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Maintaining trust and acting fairly

- 1.1 You do not unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services.
- 1.2 You do not abuse your position by taking unfair advantage of *clients* or others.
- 1.3 You perform all *undertakings* given by you, and do so within an agreed timescale or if no timescale has been agreed then within a reasonable amount of time.
- 1.4 You do not mislead or attempt to mislead your *clients*, the *court or others*, *either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client)*.

Dispute resolution and proceedings before courts, tribunals and inquiries

- 2.1 You do not misuse or tamper with evidence, or attempt to do so.
- 2.2 You do not seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their evidence.
- 2.3 You do not provide or offer to provide any benefit to witnesses dependent upon the nature of their evidence or the outcome of the case.
- 2.4 You only make assertions or put forward statements, representations or submissions to the *court* or others which are properly arguable.
- 2.5 You do not place yourself in contempt of *court*, and you comply with *court* orders which place obligations on you.
- 2.6 You do not waste the *court's* time.
- 2.7 You draw the *court's* attention to relevant cases and statutory provisions, or procedural irregularities which are likely to have a material effect on the outcome of the proceedings.

Service and competence

- 3.1 You only act for *clients* on instructions from the *client*, or from someone authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your *client's* wishes, you do not act unless you have satisfied yourself that they do.
- 3.2 You ensure that the service you provide to *clients* is competent and delivered in a timely manner.

- 3.3 You maintain your competence to carry out your role and keep your professional knowledge and skills up to date.
- 3.4 You consider and take account of your *client's* attributes, needs and circumstances.
- 3.5 Where you supervise or manage others providing legal services:
- (a) you remain accountable for the work carried out through them; and
 - (b) you effectively supervise work being done for *clients*.
- 3.6 You ensure that the individuals you manage are competent to carry out their role, and keep their professional knowledge and skills up to date.

Client money and assets

- 4.1 You properly account to *clients* for any *financial benefit* you receive as a result of their instructions.
- 4.2 You safeguard money and *assets* entrusted to you by *clients* and others.
- 4.3 Unless you work in an *authorised body*, you do not personally hold *client money*.

Referrals, introductions and separate businesses

Referrals and introductions

- 5.1 *In respect of any referral of a client by you to another person, or of any third party who introduces business to you or with whom you share your fees, you ensure that:*
- (a) *clients* are informed of any financial or other interest which you or your business or employer has in referring the *client* to another *person or which an introducer* has in referring the *client* to you;
 - (b) *clients* are informed of any fee sharing *arrangement* that is relevant to their matter;
 - (c) the agreement is in writing;
 - (d) you do not receive payments relating to a referral or make payments to an introducer in respect of *clients* who are the subject of criminal proceedings; and

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- (e) any *client* referred by an *introducer* has not been acquired in a way which would breach the *SRA's regulatory arrangements* if the *person* acquiring the *client* were regulated by the *SRA*.

Separate businesses

- 5.2 You ensure that *clients* are clear about the extent to which the services that you and any *separate business* offer are regulated.
- 5.3 You do not represent a *separate business* or any of its services as being regulated by the *SRA*.
- 5.4 You only:
 - (a) refer, recommend or introduce a *client* to a *separate business*;
 - (b) put your *client* and a *separate business* in touch with each other; or
 - (c) divide, or allow to be divided, a *client's* matter between you and a *separate business*,where the *client* has given informed consent to your doing so.
- 5.5 Where you and a *separate business* jointly publicise services, you ensure that the nature of the services provided by each business is clear.

Conflict, confidentiality and disclosure

Conflict of interests

- 6.1 You do not act if there is a conflict of interest between you and your *client* or a significant risk of such a conflict.
- 6.2 You do not act in relation to a matter or particular aspect of it if there is a *client conflict* or a significant risk of such a conflict in relation to that matter or aspect of it, unless:
 - (a) the *clients* have an agreed common purpose in relation to the matter or the aspect of it, as appropriate, and a strong consensus on how that purpose is to be achieved; or
 - (b) the *clients* are *competing for the same objective* which, if attained, by one *client* will make that objective unattainable to the other *client*.and the conditions below are met, namely that:

- (i) all the *clients* have given informed consent, given or evidenced in writing, to you acting; and
- (ii) where appropriate, you put in place effective safeguards to protect your *clients'* confidential information; and
- (iii) the benefits to the *clients* of doing so outweigh the risks to the *clients of you acting*.

Confidentiality and disclosure

- 6.3** You keep the affairs of *clients* confidential unless disclosure is required or permitted by law or the *client* consents.
- 6.4** Where you are acting for a *client*, you make that *client* aware of all information material to the matter of which you have knowledge, except when:
- (a) the disclosure of that information is prohibited by law;
 - (b) your *client* gives informed consent, given or evidenced in writing, to the information not being disclosed to them;
 - (c) you have reason to believe that serious physical or mental injury will be caused to your *client* or another if the information is disclosed; or
 - (d) the information is contained in a privileged document that you have knowledge of only because it has been mistakenly disclosed.
- 6.5** You do not act for a *client* in a matter where that *client* has an interest adverse to the interest of another current *client* or a former *client* for whom your business or employer holds confidential information which is material to that matter, unless:
- (a) all effective measures have been taken which result in there being no real risk of disclosure of the confidential information; or
 - (b) the *client* has given informed consent, given or evidenced in writing, to you acting, including to any measures taken to protect their information.

Cooperation and accountability

- 7.1** You keep up to date with and follow the law and regulation governing the way you work.
- 7.2** You are able to justify your decisions and actions in order to demonstrate compliance with your obligations under the *SRA regulatory arrangements*.

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- 7.3** You cooperate with the **SRA**, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 7.4** You respond promptly to the **SRA** and:
- (a) provide full and accurate explanations, information and documents in response to any request or requirement;
 - (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 7.5** You do not attempt to prevent anyone from providing information to the **SRA**.
- 7.6** You notify the **SRA** promptly if you become aware:
- (a) of any material changes to information previously provided to the **SRA**, by you or on your behalf, about you or your practice; and
 - (b) that information provided to the **SRA**, by you or on your behalf, about you or your practice is or may be false, misleading, incomplete or inaccurate.
- 7.7** You ensure that a prompt report is made to the **SRA** or another **approved regulator**, as appropriate, of any serious breach of their **regulatory arrangements** by any **person** regulated by them (including you) of which you are aware. If requested to do so by the **SRA** you investigate whether there have been any serious breaches that should be reported to the **SRA**.
- 7.8** You act promptly to take any remedial action requested by the **SRA**.
- 7.9** You inform **clients** promptly of any act or omission which could give rise to a claim by them against you. If requested to do so by the **SRA** you investigate whether anyone may have a claim against you.
- 7.10** Any obligation under this section to notify, or provide information to, the **SRA** will be satisfied if you provide information to your firm's **COLP** or **COFA**, as and where appropriate, on the understanding that they will do so.

When you are providing services to the public or a section of the public:

Client identification

- 8.1** You take appropriate steps to identify who you are acting for in relation to any matter.

Complaints handling

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- 8.2 You ensure that, as appropriate in the circumstances, you either establish and maintain, or participate in, a procedure for handling *complaints* in relation to the legal services you provide.
- 8.3 You ensure that *clients* are informed in writing at the time of engagement about their right to complain about your services and your charges, and how *complaints* can be made.
- 8.4 You ensure that *clients* are informed, in writing:
- (a) both at the time of engagement and, if a *complaint* has been brought at the conclusion of your *complaints* procedure, of any right they have to complain to the *Legal Ombudsman*, the time frame for doing so and full details of how to contact the *Legal Ombudsman*; and
- (b) if a *complaint* has been brought and your *complaints* procedure has been exhausted:
- (i) that you cannot settle the *complaint*;
- (ii) of the name and website address of an alternative dispute resolution (ADR) approved body which would be competent to deal with the *complaint*; and
- (iii) whether you agree to use the scheme operated by that body.
- 8.5 You ensure that *clients' complaints* are dealt with promptly, fairly and free of charge.

Client information and publicity

- 8.6 You give *clients* information in a way they can understand. You ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.
- 8.7 You ensure that *clients* receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred.
- 8.8 You ensure that any *publicity* you are responsible for in relation to your practice is accurate and not misleading, including that relating to your charges and the circumstances in which *interest* is payable by or to *clients*.
- 8.9 You ensure that *clients* understand whether and how the services you provide are regulated and about the protections available to them.

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Supplemental notes

Powers, commencement/transitional provisions

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Annex

Draft SRA Code of Conduct for Firms [2017]

[SRA Code of Conduct for Firms \[2017\]](#)

Introduction

The SRA Principles comprise the fundamental tenets of ethical behaviour that we expect all those that we regulate to uphold. This includes all individuals and firms that we regulate, including authorised firms and their managers and employees. The Principles are as follows:

You:

1. uphold the rule of law and the proper administration of justice
2. ensure that your conduct upholds public confidence in the profession and those delivering legal services
3. act with independence
4. act with honesty and integrity
5. act in a way that encourages equality, diversity and inclusion
6. act in the best interests of each client

This Code of Conduct describes the standards and business controls that we, the SRA, and the public expect of firms authorised by us to provide legal services. These aim to create and maintain the right culture and environment for the delivery of competent and ethical legal services to consumers. If you are a MDP, the SRA Principles and these standards apply in relation to your [regulated activities](#).

Sections 8 and 9 set out the requirements of managers and compliance officers in those firms, respectively.

Serious breach may lead to our taking regulatory action against the firm itself as an entity, or its managers or compliance officers, who all share responsibility for ensuring that the standards and requirements are met. We may also take action against employees working within the firm for any breaches for which they are responsible. A breach may be serious either in isolation or because it comprises a persistent failure to comply or pattern of behaviour.

Maintaining trust and equality and diversity

- 1.1 You do not abuse your position by taking unfair advantage of *clients* or others.

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- 1.2 You monitor, report and publish workforce diversity data, as *prescribed* by the *SRA*.

Compliance and business systems

- 2.1 You have effective governance structures, arrangements, systems and controls in place that ensure:
- (a) you comply with all the *SRA's regulatory arrangements*, as well as with other regulatory and legislative requirements, which apply to you;
 - (b) your *managers* and *employees* comply with the *SRA's regulatory arrangements* which apply to them;
 - (c) your *managers*, *employees* and *interest holders* and those you employ or contract with do not cause or substantially contribute to a breach of the *SRA's regulatory arrangements* by you or your *managers* or *employees*;
 - (d) your *compliance officers* are able to discharge their duties under rules 9.1 and 9.2 below.
- 2.2 You keep and maintain records to demonstrate compliance with your obligations under the *SRA's regulatory arrangements*.
- 2.3 You remain accountable for compliance with the *SRA's regulatory arrangements* where your work is carried out through others, including your *managers* and those you employ or contract with.
- 2.4 You actively monitor your financial stability and business viability. Once you are aware that you will cease to operate, you effect the orderly wind-down of your activities.
- 2.5 You identify, monitor and manage all material risks to your business, including those which may arise from your *connected practices*.

Cooperation and information requirements

- 3.1 You keep up to date with and follow the law and regulation governing the way you work.
- 3.2 You cooperate with the *SRA*, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 3.3 You respond promptly to the *SRA* and:

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- (a) provide full and accurate explanations, information and documentation in response to any requests or requirements;
 - (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 3.4** You act promptly to take any remedial action requested by the **SRA**.
- 3.5** You inform **clients** promptly of any act or omission which could give rise to a claim by them against you. If requested to do so by the **SRA** you investigate whether anyone may have a claim against you.
- 3.6** You notify the **SRA** promptly:
- (a) of any indicators of serious financial difficulty relating to you;
 - (b) if a **relevant insolvency event** occurs in relation to you;
 - (c) of any change to information recorded in the **register**.
- 3.7** You provide to the **SRA** an information report on an annual basis or such other period as specified by the **SRA** in the **prescribed** form and by the **prescribed** date.
- 3.8** You notify the **SRA** promptly if you become aware:
- (a) of any material changes to information previously provided to the **SRA**, by you or on your behalf, about you or your **managers, owners** or **compliance officers**; and
 - (b) that information provided to the **SRA**, by you or on your behalf, about you or your **managers, owners** or **compliance officers** is or may be false, misleading, incomplete or inaccurate.
- 3.9** You promptly report to the SRA or another **approved regulator**, as appropriate, any serious breach of their **regulatory arrangements** by any **person** regulated by them (including you) of which you are aware. If requested to do so by the **SRA** you investigate whether there have been any serious breaches that should be reported to the **SRA**.

Service and competence

- 4.1** You only act for **clients** on instructions from the **client**, or someone authorised to provide instructions on their behalf. If you have reason to suspect that the

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instructions do not represent your *client's* wishes, you do not act unless you have satisfied yourself that they do.

- 4.2 You ensure that the service you provide to *clients* is competent and delivered in a timely manner, and takes account of your *client's* attributes, needs and circumstances.
- 4.3 You ensure that your *managers* and *employees* are competent to carry out their role, and keep their professional knowledge and skills up to date.
- 4.4 You have an effective system for supervising *clients'* matters.

Client money and assets

- 5.1 You properly account to *clients* for any *financial benefit* you receive as a result of their instructions.
- 5.2 You safeguard money and *assets* entrusted to you by *clients* and others.

Conflict and confidentiality

Conflict of interests

- 6.1 You do not act if there is a conflict of interest between you and your *client* or a significant risk of such a conflict.
- 6.2 You do not act in relation to a matter or a particular aspect of it if there is a *client conflict* or a significant risk of such a conflict in relation to that matter or aspect of it, unless:
 - (a) the *clients* have an agreed common purpose in relation to the matter or the aspect of it, as appropriate, and a strong consensus on how that purpose is to be achieved; or
 - (b) the *clients* are *competing for the same objective* which, if attained, by one *client* will make that objective unattainable to the other *client*:

and the conditions below are met, namely that:

- (i) all the *clients* have given informed consent, given or evidenced in writing, to you acting;
- (ii) where appropriate, you put in place effective safeguards to protect your *clients'* confidential information; and
- (iii) the benefits to the *clients* of doing so outweigh the risks to the *clients of you acting*.

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Confidentiality and disclosure

- 6.3** You keep the affairs of *clients* confidential unless disclosure is required or permitted by law or the *client* consents.
- 6.4** Any individual who is acting for a *client* makes that *client* aware of all information material to the matter of which the individual has knowledge except when:
- (a) legal restrictions prohibit them from passing the information to the *client*;
 - (b) the *client* gives informed consent, given or evidenced in writing, to the information not being disclosed to them;
 - (c) there is evidence that serious physical or mental injury will be caused to the *client* or another if the information is disclosed; or
 - (d) the information is contained in privileged documents that the individual has knowledge of only because they have been mistakenly disclosed.
- 6.5** You do not act for a *client* in a matter where that *client* has an interest adverse to the interest of another current *client* or a former *client* for whom you hold confidential information which is material to that matter, unless:
- (a) all effective measures have been taken which result in there being no real risk of disclosure of the confidential information; or
 - (b) the *client* has given informed consent, given or evidenced in writing, to you acting, including to any measures taken to protect their information.

Applicable Outcomes in the SRA Code of Conduct for Solicitors and RELs 2017

- 7.1** The following sections of the SRA Code of Conduct for Solicitors, RELs and RFLs 2017 apply to you in their entirety as though references to "you" were references to you as a *firm*:
- (a) Referrals, introductions and separate businesses (5.1 to 5.5);
 - (b) Standards which apply when providing services to the public or a section of the public, namely Client identification (8.1), Complaints handling (8.2 to 8.5), and Client information and publicity (8.6 to 8.9).

Managers in SRA authorised firms

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- 8.1 If you are a *manager*, you are responsible for compliance by your *firm* with this Code. This responsibility is joint and several if you share management responsibility with other *managers* of the *firm*.

Compliance officers

- 9.1 If you are a *COLP* you take all reasonable steps to:
- (a) ensure compliance with the terms and conditions of your *firm's authorisation*;
 - (b) ensure compliance by your *firm* and its *managers*, *employees* or *interest holders* with the *SRA's regulatory arrangements* which apply to them;
 - (c) ensure that your *firm's managers*, *employees* and *interest holders* do not cause or substantially contribute to a breach of the *SRA's regulatory arrangements*;
 - (d) as soon as reasonably practicable, report to the *SRA* any serious breach of the terms and conditions of your *firm's authorisation*, or the *SRA's regulatory arrangements* which apply to your *firm*, *managers* or *employees*;

save in relation to the matters which are the responsibility of the *COFA* as set out in rule 9.2 below.

- 9.2 If you are a *COFA* you take all reasonable steps to:
- (a) ensure that your *firm* and its *managers* and *employees* or the *sole practitioner* comply with any obligations imposed upon them under the *SRA Accounts Rules*;
 - (b) as soon as reasonably practicable, report to the *SRA* any serious breach of the *SRA Accounts Rules* which apply to them.

Supplemental notes

Powers, commencement/transitional provisions

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SRA Glossary for Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms – *definitions that substantively differ under the proposals*

SRA Glossary [2017] for Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms [2017]

Glossary terms	Definition
<i>client conflict</i>	means a situation where your separate duties to act in the best interests of two or more <i>clients</i> conflict
<i>manager</i>	means: (i) the sole <i>principal</i> in a <i>recognised sole practice</i> ; (ii) a <i>member</i> of a <i>LLP</i> ; (iii) a <i>director</i> of a <i>company</i> ; (iv) a <i>partner</i> in a <i>partnership</i> ; or (v) in relation to any other body, a member of its governing body
<i>Register</i>	means the roll kept under Part I of the <i>SA</i> , and the registers of: (i) <i>RELs</i> kept under European Communities (Lawyer's Practice) Regulations 2000; (ii) <i>RFLs</i> kept under the Courts and Legal Services Act 1990; (iii) <i>authorised firms</i> kept under the <i>AJA</i> and the <i>LSA</i> .
<i>separate business</i>	means, where you <i>own</i> , manage or are employed by an <i>authorised body</i> , a separate business which you <i>own</i> , are <i>owned by</i> , <i>actively participate in</i> or are <i>connected with</i> and which is not an <i>authorised body</i> , an <i>authorised non-SRA firm</i> , or an <i>overseas practice</i> .

To note: this Glossary covers only new or substantively different definitions, which apply to both proposed Codes and is not a full glossary. Other defined terms in these Codes remain as set out in the SRA Handbook Glossary 2012.

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Rationale document for proposed Codes of Conduct

Drafting approach - common themes

Streamlining

- We have *removed prescriptive drafting* to produce more high level and purposive standards to be met by those to whom the Codes apply. This has led to a more streamlined set of provisions and examples are set out below. Alongside these high level standards, we will provide a range of case studies which will help individuals and firms understand more easily how the standards will apply to them in different scenarios. We plan to develop the areas of confidentiality and conflict of interests based upon this approach.
- We have also *removed duplication* by deleting provisions in the Code which already exist elsewhere in the Handbook; are already requirements imposed by legislation; or which are no longer required under proposed reforms.
- We have *removed duplication* where an Outcome is already covered by a Principle, either by removing the existing Outcomes or revising the Principles.
- Where there is significant overlap between the two Codes, we have reflected that in the proposed drafting - by *cross-referencing requirements* contained in the Code for Individuals in the Code for Firms - rather than duplicating sections across both Codes.
- By adopting a structure *delineating individual and firm regulation* with a separate set of provisions targeting managers in unauthorised firms, we have also removed most of the current Chapter 7 (Management of your business) provisions. We have used some of that content to create revised provisions set out in the Code for Firms, albeit in a more streamlined format.
- Reporting obligations are now significantly streamlined, as we have moved these from a range of regulatory arrangements (e.g. SRA Accounts Rules 2011, SRA Practice Framework Rules 2011 and SRA Authorisation Rules 2011) into one place: the Code for Firms. However, we have also included some duplication of responsibilities across the two Codes (e.g. reporting and supervision obligations are imposed on both solicitors and firms or their COLPs). This is because we consider that it is a core professional obligation, where a solicitor needs to take individual responsibility for ensuring something happens just as a firm or its COLP needs to. This is quite different from the unnecessary duplicating of processes across both Codes.
- We will *incorporate relevant content into guidance and case studies*. This is content currently covered by Indicative Behaviours and by overly prescriptive Outcomes. As a result, there will no longer be 'Indicative Behaviours' but,

where we consider it necessary, some of their content will form the basis of standards in their own right - examples are provided below.

Identifying gaps

- Where we have identified regulatory gaps, sometimes owing to recent relevant legislative developments, we have sought to draft new provisions.

Streamlining (removing prescriptive drafting)

Example 1: co-operation and accountability

Another chapter in the current Code of Conduct that we have substantially revised is Chapter 10 (You and your regulator) which covers co-operation with regulators and ombudsmen. Including introductory text, Outcomes 10.1 to 10.13 and Indicative Behaviours 10.1 to 10.14, the current chapter is almost three pages long.

In the *SRA Code of Conduct for solicitors, RELs and RFLs [2017]*, we have replaced Outcomes (10.1-10.13) plus information from the accompanying 14 Indicative Behaviours with a streamlined set of eight new provisions, which are included in the "**Cooperation and accountability**" section:

- 7.3** You cooperate with the **SRA**, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 7.4** You respond promptly to the **SRA** and:
- (a) provide full and accurate explanations, information and documents in response to any request or requirement;
 - (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 7.5** You do not attempt to prevent anyone from providing information to the **SRA**.
- 7.6** You notify the **SRA** promptly if you become aware:
- (a) of any material changes to information previously provided to the **SRA**, by you or on your behalf, about you or your practice; and
 - (b) that information provided to the **SRA**, by you or on your behalf,

about you or your practice is or may be false, misleading, incomplete or inaccurate.

- 7.7** You ensure that a prompt report is made to the **SRA** or another **approved regulator**, as appropriate, of any serious breach of their **regulatory arrangements** by any **person** regulated by them (including you) of which you are aware. If requested to do so by the **SRA** you investigate whether there have been any serious breaches that should be reported to the **SRA**.
- 7.8** You act promptly to take any remedial action requested by the **SRA**.
- 7.9** You inform **clients** of any act or omission which could give rise to a claim by them against you. If requested to do so by the **SRA** you investigate whether anyone may have a claim against you.
- 7.10** Any obligation under this section to notify, or provide information to, the **SRA** will be satisfied if you provide information to your firm's **COLP** or **COFA**, as and where appropriate, on the understanding that they will do so.

In the *SRA Code of Conduct for Firms [2017]*, we have included nine redrafted provisions in the "**Cooperation and information requirements**" section to replace not only provisions from Chapter 10 of the current SRA Code of Conduct 2011 but also to cover information requirements set out across various sets of rules and regulations in the SRA Handbook. For example, Rule 8.7 in the SRA Authorisation Rules 2011; and Rule 18 of the SRA Practice Framework Rules 2011:

8.7 Information requirements

- (a) An authorised body must properly complete and provide to the SRA an information report on an annual basis or such other period as specified by the SRA in the prescribed form and by the prescribed date.
- (b) An authorised body must provide any necessary permissions for information to be given to the SRA so as to enable it to:
- (i) use and prepare a report on the documents produced under (a) above; and
 - (ii) seek verification from clients, employees, managers or any other body including banks, building societies or other financial institutions.
- (c) An authorised body must notify the SRA as soon as it becomes aware of any changes to relevant information about itself, its employees, managers, or interest holders including any non-compliance with these rules and the conditions on the body's authorisation.

(d) If an authorised body becomes aware or has information that reasonably suggests that it has or may have provided the SRA with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a materially significant way, it must notify the SRA immediately.

Rule 18: Information and documentation

18.1 An authorised body must supply any information and documentation relating to its composition and structure or to any of its managers, employees, members or shareowners or the sole practitioner, as and when requested to do so by the SRA.

18.2 Notwithstanding any requirement to obtain approval of a manager, owner, COLP or COFA under Part 4 of the SRA Authorisation Rules, an authorised body must notify the SRA within seven days of any change to its:

(a) name;

(b) registered office and/or any of its practising addresses;

(c) managers;

(d) interest holders , if it is a recognised body, and in the case of a recognised body which is a company, this includes members and shareowners;

(e) owners , if it is a licensed body, and in the case of a licensed body which is a company, this includes members and shareowners;

(f) COLP;

(g) COFA; or

(h) overseas practices, including any contact details and practising/registered addresses of its overseas practices.

18.3 An authorised body must notify the SRA within seven days if it is an unlimited company and it is re-registered as limited under the Companies Acts.

18.4 If a relevant insolvency event occurs in relation to an authorised body its managers, or in the case of an authorised body which is an overseas company, its directors, must notify the SRA within seven days.

These are the nine redrafted provisions in the "**Cooperation and information requirements**" section of the SRA *Code of Conduct for Firms [2017]* which we have included:

3.1 You keep up to date with and follow the law and regulation governing the way you work.

3.2	You cooperate with the SRA , other regulators, ombudsmen and those bodies overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
3.3	You respond promptly to the SRA and: <ul style="list-style-type: none">(a) provide full and accurate explanations, information and documentation in response to any requests or requirements;(b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA.
3.4	You act promptly to take any remedial action requested by the SRA .
3.5	You inform clients promptly of any act or omission which could give rise to a claim by them against you. If requested to do so by the SRA you investigate whether anyone may have a claim against you.
3.6	You notify the SRA promptly: <ul style="list-style-type: none">(a) of any indicators of serious financial difficulty relating to you;(b) if a relevant insolvency event occurs in relation to you;(c) of any change to information recorded in the register.
3.7	You provide to the SRA an information report on an annual basis or such other period as specified by the SRA in the prescribed form and by the prescribed date.
3.8	You notify the SRA promptly if you become aware: <ul style="list-style-type: none">(a) of any material changes to information previously provided to the SRA by you or on your behalf about you or your managers, owners or compliance officers;(b) that information provided to the SRA, by you or on your behalf, about you or your managers, owners or compliance officers is or may be false, misleading, incomplete or inaccurate.
3.9	You promptly report to the SRA or another approved regulator , as appropriate, any serious breach of their regulatory arrangements by any person regulated by them (including you) of which you are aware. If requested to do so by the SRA you investigate whether there have been any serious breaches that should be reported to the SRA .

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Despite streamlining the drafting in the revised provisions which encapsulates a host of existing provisions across the Handbook, we have broadened the scope to cover other regulators and those bodies with a role overseeing or supervising the delivery of, or investigating concerns in relation to legal services - the current Code limits cooperation to (primarily) the SRA and the Legal Ombudsman.

Streamlining (removing duplication)

We have removed requirements placed on individuals or firms, which already exist in legislation or which are provisions often simply requiring compliance with the law in general. Equally, where the SRA Principles cover an existing Outcome in the current Code, we have either removed that Outcome or have sought to revise the Principle to prevent unnecessary duplication.

Example 1: existence of provision elsewhere in legislation

In the SRA Code of Conduct [2011] there are the following provisions relating to introductions to third parties and referrals:

Chapter 6: Your client and introductions to third parties

O(6.4) you are not paid a prohibited referral fee.

Chapter 9: Fee sharing and referrals

O(9.8) you do not pay a prohibited referral fee

Neither of these Outcomes will feature in the new Codes, as the requirements merely reflect the legislative position as set out in the Legal Aid, Sentencing and Punishment of Offenders Act (2012) and, more recently, in the Criminal Justice and Courts Act (2015) which solicitors already have to comply with as a matter of law.

Example 2: requirements to comply with the law

Examples can be found in current Chapters 1, 2 and 7 of the SRA Code of Conduct 2011:

O(1.3) when deciding whether to act, or terminate your instructions, you comply with the law and the Code;

O(7.5) you comply with legislation applicable to your business, including anti-money laundering and data protection legislation;

O(7.7) you comply with the statutory requirements for the direction and supervision

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of *reserved legal activities* and *immigration work*;

We do not consider that it is necessary to duplicate these requirements in various sections of the proposed SRA Code of Conduct for solicitors, RELs and RFLs [2017] or the SRA Code of Conduct for Firms [2017].

Example 3: existence of Principle covering Outcomes

Acting in the client's best interests

A number of chapters in the current SRA Code of Conduct 2011 include a provision relating to a client's interest:

O(1.2) you provide services to your *clients* in a manner which protects their interests in their matter, subject to the proper administration of justice;

O(1.6) you only enter into fee agreements with your *clients* that are legal, and which you consider are suitable for the *client's* needs and take account of the *client's* best interests;

O(6.1) whenever you recommend that a *client* uses a particular *person* or business, your recommendation is in the best interests of the *client* and does not compromise your independence;

O(9.2) your *clients'* interests are protected regardless of the interests of an *introducer* or *fee sharer* or your interest in receiving *referrals*;

We propose that the *SRA Principles [2017]* will include a duty to:

- act in the best interests of each client (proposed Principle 6)

We do not therefore consider it necessary to duplicate this requirement in proposed provisions in the SRA Code of Conduct for solicitors, RELs and RFLs [2017] or the SRA Code of Conduct for Firms [2017].

Streamlining (cross-referencing where there is overlap between proposed Codes)

To avoid unnecessary duplication across the Codes, we will cross-reference requirements that will feature in both. Accordingly, we propose that the following drafting is set out in the SRA Code of Conduct for Firms [2017]:

Applicable standards in the SRA Code of Conduct for Solicitors, RELs and RFLs 2017

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7.1 The following sections of the SRA Code of Conduct for Solicitors, RELs and RFLs 2017 apply to you in their entirety as though references to "you" were references to you as a *firm*:

(a) Referrals, introductions and separate businesses (5.1 to 5.5);

(b) Standards which apply when providing services to the public or a section of the public, namely Client identification (8.1); Complaints handling (8.2 to 8.5); and Client information and publicity (8.6 to 8.9).

Streamlining (removing need for Indicative Behaviours)

As set out above, we will incorporate relevant content from the existing SRA Code of Conduct 2011 into guidance and case studies, where it is no longer required to be part of the high level standards. This is mainly content currently covered by Indicative Behaviours and by overly prescriptive Outcomes. As a result, there will no longer be 'Indicative Behaviours' but, where we consider it necessary, some of their content will form the basis of standards in their own right. The following are examples:

- IB(1.4) - explaining any arrangements, such as fee sharing or referral arrangements, which are relevant to the client's instructions - has been made into new 5.1(b) in the Individual Code and new 7.1(a) in the Code for Firms;
- IB(9.4) - being satisfied that any client referred by an introducer has not been acquired as a result of marketing or other activities which, if done by a person regulated by the SRA, would be contrary to the Principles or any requirements of the Code - has become new 5.1(e) in the Individual Code and new 7.1(a) in the Code for Firms; and
- IB(1.22(f)) - having a written complaints procedure which does not involve any charges to clients for handling their complaints - is now reflected in new 8.5 in the Individual Code and new 7.1(b) in the Code for Firms.

Identifying gaps: where we require new provisions

We have drafted new standards which we consider ought to be included in the proposed Codes where we have identified gaps - often, these arise from recent legislative developments, current market trends or following a comparison of our provisions with those of other regulators and identifying where alignment might be needed.

For example, in the SRA Code of Conduct for solicitors, RELs and RFLs [2017], we have included new standards in relation to dispute resolution and proceedings before courts, tribunals and inquiries to try to align our provisions relating to advocacy with

those of other legal services regulators:

2.4 You only make assertions or put forward statements, representations or submissions to the *court* or others which are properly arguable.

2.6 You do not waste the *court's* time.

We have included a new standard relating to continuing competence in both the SRA Code of Conduct for solicitors, RELs and RFLs [2017] and the SRA Code of Conduct for Firms [2017]:

3.3 You maintain your competence to carry out your role and keep your professional knowledge and skills up to date.

4.3 You ensure that your *managers* and *employees* are competent to carry out their role, and keep their professional knowledge and skills up to date.

We have also included a standard in the SRA Code of Conduct for solicitors, RELs and RFLs [2017] relating to solicitors in supervisory positions to make clear that they are accountable for the work carried out by those they supervise:

3.5 Where you supervise or manage others providing legal services:

(a) you remain accountable for the work carried out through them;

When reviewing existing Outcomes, it became clear that there was no provision requiring solicitors or authorised firms (or their managers and employees) to stay up to date with legal developments and the regulatory framework linked to their area of work which reflects the principles of ongoing competence. Accordingly, we added a new standard to the "Cooperation and accountability" section of the SRA Code of Conduct for solicitors, RELs and RFLs [2017] and a new standard to the "Cooperation and information requirements" section of the SRA Code of Conduct for Firms [2017]:

7.1 You keep up to date with and follow the law and regulation governing the way you work.

3.1 You keep up to date with and follow the law and regulation governing the way you work.

Given the reported increase in identity theft, fraud and cybercrime affecting businesses, we consider it is now important to include a standard setting out a new requirement in relation to confirming client identification (new 8.1 in the SRA Code of Conduct for solicitors, RELs and RFLs [2017] and addressed by 7.1(b) in the SRA

Code of Conduct for Firms [2017]):

8.1 You take appropriate steps to identify who you are acting for in relation to any matter.

For the same reasons, we have also included a new standard about obtaining instructions when acting for a client:

3.1 You only act for *clients* on instructions from the *client*, or from someone authorised to provide instructions on their behalf. If you have reason to suspect that the instructions to not represent your *client's* wishes, you do not act unless you have satisfied yourself that they do.

The same proposed standard is replicated in the SRA Code of Conduct for Firms [2017] as new 4.1.

We also propose amending one of the complaints handling provisions to reflect the current position in terms of the ADR signposting requirements set out in UK regulations, which transpose the EU Directive on consumer alternative dispute resolution. When considering the new position, we also needed to recognise that at this stage, the Legal Ombudsman's application to become certified as an ADR approved body is currently on hold, meaning that our drafting cannot relate specifically to the Legal Ombudsman and needs to apply more widely, so that it remains current and does not require constant updating:

8.4 You ensure that *clients* are informed, in writing:

(b) if a *complaint* has been brought and your *complaints* procedure has been exhausted:

- (i) that you cannot settle the *complaint*;
- (ii) of the name and website address of an alternative dispute resolution (ADR) approved body which would be competent to deal with the *complaint*; and
- (iii) whether you agree to use the scheme operated by that body.

Drafting approach - use of language

We have tried to simplify the language used in the proposed Codes, to make them more accessible and understandable to their users. Throughout the Codes, we have used language which could be termed as subjective and even vague or unquantifiable. Examples of this type of wording in the Individual Code include:

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- "reasonable" in new 1.3 (in terms of within a 'reasonable' amount of time);
- "where appropriate" in new 6.2(b)(ii) (in terms of putting in place effective safeguards);
- "in a timely manner" in new 3.2 (in terms of delivering service 'within a timely manner');
- "promptly" in new 7.4, 7.6, 7.8 and 7.9 - thus removing any specific time limit in each context; and
- "fair(ly)/unfair(ly)" in new 1.1, 1.2 and 8.5.

We have, however, chosen words of this nature as we want to move away from prescriptive and rigid drafting and introduce more flexibility to require those to whom the Codes apply to use their own judgement when applying the Code to their practice and conduct. We have confidence adopting this approach, as courts and tribunals interpret such terms based on the individual facts and circumstances of each case. In turn, as we will expect those we regulate to exercise their judgement in applying the standards within the Codes, under our revised enforcement strategy, we will look at each case in turn and will adopt a proportionate approach. We will reach decisions as to the appropriate course of action having assessed the risk each case presents to our regulatory purpose: the need to provide appropriate protection to consumers, and to support the rule of law and administration of justice.

We will also look at the context of the alleged wrongdoing and the seriousness of the issues in hand in their own sets of circumstances. This may mean that we take into account private conduct in some cases, when considering whether there has been a breach of our Principles. We will also consider the relative seniority of the alleged wrongdoer, and the degree of alleged harm caused (and to whom) when considering regulatory sanctions. Where there has been a serious breach (as opposed to a technical breach) of these standards, and we find that solicitors or firms have wilfully, carelessly or negligently misused their freedom, or have abused their position, then our response can be robust and may lead to our taking of regulatory action against an individual solicitor or against a firm itself as an entity, or against its managers or compliance officers, who all share responsibility for ensuring that the standards and requirements are met. A breach may be serious either in isolation or because it comprises a persistent failure to comply or highlights a pattern of behaviour. In practice, this means that any issues of interpretation will turn on the facts.

We hope that the range of case studies we propose to provide will help all those to whom the Codes apply to understand how the standards might apply to them in different scenarios. This is because we recognise that in practice, no one case can necessarily be treated in the same way. By adopting the approach that we have in terms of purposive standards, we will need the proposed case studies to guide people through the various situations in which they find themselves, in practice.

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Initial Regulatory Impact Assessment – Looking to the Future

Introduction

1. We are changing how we regulate to protect the public in a fast changing market. The changes we are proposing as the first phase of our review are set out in detail in our consultation paper³⁴. We have started by reviewing the *SRA Principles 2011 and the SRA Code of Conduct 2011*. The new Principles and Codes would be supported by a new approach to helping firms comply with our requirements. In this first phase we have also started to review the *SRA Practice Framework Rules 2011 and the SRA Authorisation Rules 2011*, specifically which restrictions we can remove to allow solicitors and firms flexibility about where and how they practise..
2. Taken together our proposals are intended to:
 - make our rules shorter, clearer and easier to use, reducing unnecessary costs of regulation;
 - ensure that regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses; and
 - remove unnecessary barriers and restrictions and enable increased competition, innovation and growth, and the choices available to access legal services from a solicitor
3. The Legal Services Act 2007 provides a common framework and set of objectives for all the legal services regulators and for the Legal Services Board (LSB), our oversight regulator. We must always have these in mind when we set the rules used to govern the conduct of the people and firms we regulate. These objectives are to:
 - protect and promote the public interest;
 - support the constitutional principle of the rule of law;
 - improve access to justice;
 - protect and promote the interests of consumers;
 - promote competition in the provision of services;
 - encourage an independent, strong, diverse and effective legal profession; and
 - increase public understanding of the citizens' legal rights and duties.
4. We have assessed these changes against our regulatory objectives, the better regulation principles and our wider equality duty. Where we have identified possible adverse impacts arising from our proposals we explain the steps we will take to mitigate these. We are also publishing an independent assessment of the potential in-principle economic benefits and risks of the proposed changes. It considers positive and negative impacts on competition and innovation and on different

³⁴ Looking to the Future – Flexibility and public protection a phased review of the SRA Handbook and our regulatory approach - Principles, Code of Conduct, and Practice Framework Rules June 2016

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stakeholders (consumers, solicitors and providers) that could arise from our proposals which in turn could drive broader economic effects.³⁵

5. For the purpose of this assessment we have grouped the proposed changes to the Handbook into two broad areas:
 - a. The implementation of a set of drafting principles to restructure and clarify the SRA Principles and Code of Conduct 2011 and alongside this the development of new compliance support for individuals and firms we regulate;
 - b. The proposed policy changes about where solicitors can practise

Stakeholder engagement

6. We recognise that our proposals will have different impacts across our stakeholders from small firms through to vulnerable people. Engaging them is critical to this work. It helps us explain our proposals, but more importantly it helps us understand potential impacts and what we need to do to make them work better.
7. As set out in detail in our consultation paper, over the last year we have engaged widely in developing these reforms. For example, we have spoken at a large number of conferences, talked to many firms and representative groups, spoken with the Consumer Panel and LSB. We have also shared working drafts and position papers with our virtual reference groups, including the equality and small firms groups and one specifically established for these reforms. We have created accessible online material to explain why we believe change is necessary and what our model of regulation might look in the future.
8. Our 'A Question of Trust' campaign that delivered around 5,500 'engagements' on professional standards underpins this work. As does the substantial research on consumer behaviour in choosing what to do and where to go when faced with a legal problem^{36,37}.
9. Activity will be ongoing. Over the next few months, there will be many opportunities for stakeholders to share their thoughts with us. We will be hosting webinars, roundtable discussions, workshops and using blogs and other social media activity to allow our stakeholders to comment and ask questions about our proposals. Further details are provided in the consultation document and the Looking to the Future pages of our website.

Developing our final impact assessment

³⁵ *Assessment of the economic rationale for, and possible impacts of, proposed changes to the Solicitors Regulation Authority Handbook*. Chris Decker April 2016

³⁶ For example [Consumer Legal Services 2016](#), YouGov, February 2016

³⁷ For example [Tracker Survey 2015](#), Legal Services Consumer Panel, November 2015

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10. Our stakeholder engagement and responses to our consultation will inform our final proposals. We also intend to commission and draw on further research including:
 - a. the development of a framework against which we can measure and evaluate the impact of our eventual changes going forward;
 - b. further evidence and recommendations arising from the ongoing Competition and Markets Authority study of the legal services market; and
 - c. any further relevant published research for example the Legal Service Board's report about the alternative legal services market.
11. We will consider the benefit of further Equality, Diversity and Inclusion (EDI) impact assessment work once we have seen the responses to our proposals and the draft initial impact assessment.

The legal services market

12. In 2014, the overall UK legal services market was estimated to be worth £40.1 billion by turnover.³⁸ This figure includes both the regulated and alternative legal services markets. The legal services marketplace is becoming more competitive. Consumers are more ready to consider new providers such as financial services or supermarkets and other brands for legal advice.³⁹ Traditional providers are facing competition from volume providers such as in conveyancing as well as the unbundling of legal services and self-lawyering (or DIY law). This is where individuals take on some or all of the legal work themselves – for example in probate and estate administration where year-on-year the number of individuals dealing with estates themselves is increasing⁴⁰.
13. Many consumers already access alternative legal services or services that include a mixture of SRA regulated work and work that is regulated elsewhere. They may also receive unbundled services – where the solicitor only helps with specific parts of the case. This means there is already a complex set of consumer protections arrangements across the legal service market.
14. We have published a report⁴¹ that describes the current legal services market landscape in much more detail.

The consumer protection landscape

15. Currently consumers using legal services are covered by a range of protections and consumer rights that vary according to the type of person and/or provider that they use. Surveys suggest that consumers do not always understand the range of consumer protections that apply, instead relying on 'signalling' provided by branding

³⁸ Market analysis [link required]

³⁹ Legal Services 2016, You Gov, February 2016

⁴⁰ [The Future of Legal Services](#), Law Society, January 2016

⁴¹ Market analysis [link required]

and the reputation of the legal adviser as an indicator of the likelihood of a good service.

16. Consumer protections, outside of sector specific regulation, exist covering proper delivery of these services and are improving. Consumers that purchase any service in England and Wales are covered by the Consumer Rights Act 2015⁴², which provides a framework of rights to keep consumers well-protected in most commercial environments. To illustrate, consumers using legal services provided by any business, whether a regulated law firm or an operator working in the alternative legal sector, have the right to request that those services are redone at no extra cost, or via a price reduction. The Equality Act 2010⁴³ has a similar reach in protecting consumers when they are using services in England and Wales, including legal services, and makes sure that people have the right to be treated fairly and to not be discriminated against. Consumer organisations including local Trading Standards offices and Citizens Advice support consumers to understand and use these rights, as well as make complaints.
17. Any firm that offers professional advice has a commercial incentive to take out insurance against negligence claims. In addition, some providers that work in the alternative legal services market may belong to membership organisations that set down specific consumer protection measures. Although voluntary, these are often a prerequisite in order for a business to become a member of the organisation. Examples of this include requiring members to have certain levels of indemnity insurance, or to meet a certain standard of work or level of customer service.
18. The Legal Services Board in 2012 estimated that around 86% of consumers will use a firm of solicitors to write a will and the remaining 14% of consumers will use non solicitor firms comprising mainly independent trust corporations, banks/ building societies, accountancy firms and financial advisers. Of the latter group only about 7% of consumer will use services of a firm that is not regulated by either a regulator, voluntary code or through membership of a professional body⁴⁴. This limits the likelihood that these firms will not have indemnity insurance or consumers being unable to access a complaints process.
19. Currently, if a consumer uses a legal service provided by a solicitor working in a firm authorised by the SRA, or another approved regulator they will be covered by a broader range of protections as required by the regulator's regulatory arrangements⁴⁵. These will include financial protection arrangements, such as mandatory professional insurance requirements and access to financial redress where a solicitor has been dishonest or failed to keep their client's money safe.

⁴² This Act replaced the Supply of Goods and Services Act 1982, the Sale of Goods Act 1979 and the Unfair Terms in Consumer Contracts Regulations 1999 for contracts entered into on or after 1 October 2015.

⁴³ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

⁴⁴ Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities - impact assessment and market picture, LSB, April 2012

⁴⁵ See section 21 of the Legal Services Act 2007

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20. In the case of some legal advice the provider of legal services may fall under another regulatory regime, either through their professional title or the service they provide. Claims management companies are currently regulated by the Ministry of Justice (MoJ), but the Government have proposed that the Financial Conduct Authority (FCA) to take over responsibility for this sector following a review⁴⁶. The Office of the Immigration Services Commissioner (OISC) regulates entities providing immigration and asylum advice.

Access to legal services

21. Despite the significant size of the legal services market many individual people and small businesses are unable to access legal services from a solicitor at a cost they can afford. Fewer than one in ten people experiencing legal problems instruct a solicitor or barrister.⁴⁷ The picture is very much the same for small businesses, the majority of whom have little contact with solicitors or law firms. Over half of small businesses that experience a problem try to resolve it on their own. Accountants are consulted more often than lawyers when small businesses need advice.⁴⁸ This demonstrates substantial legal need not currently being met by regulated lawyers, including solicitors.

⁴⁶ <https://www.gov.uk/government/publications/claims-management-regulation-review-final-report>

⁴⁷ How People Resolve 'Legal' Problems, Professor Pascoe Pleasence & Dr. Nigel J. Balmer, Legal Services Board 2014

⁴⁸ [The legal needs of small businesses](#), Kingston University for the Legal Services Board, 2015

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Overview of Impacts

22. Our core purpose is to protect those consumers that need protecting and to support the rule of law and the proper administration of justice. For justice to be administered properly we must encourage a legal market that is strong, diverse and accessible to those who need help. An innovative and competitive legal market can make legal services more accessible. Our approach to regulation, including the requirements we place on the solicitors and firms we regulate, must be proportionate and targeted.
23. We are consulting on redrafting the *SRA Principles and Code of Conduct 2011*⁴⁹ in a targeted and less prescriptive way - removing duplication for example with statutory requirements. We are implementing a range of ways to help firms to more easily understand how to comply, including case studies and toolkits. We expect this to lower regulatory burden and the cost of regulation.
24. Our proposed changes clarify what we expect from the individuals and firms we regulate. It will be much clearer how personal regulation applies to a solicitor, wherever they work, including those that currently work in-house. Taken together with the proposed changes to our *SRA Practice Framework Rules*⁵⁰ this makes it more likely that consumers will have a wider choice of and have better access to solicitors. In turn this should boost growth in a sector that is already growing over two and a half times faster than the economy as a whole⁵¹. The Law Society estimates⁵² that each £1 of extra turnover in the legal sector stimulates £1.39 in the rest of the economy and 100 extra jobs in legal services supports a further 67 in the wider economy.
25. The Legal Services Act does not require non-reserved legal activities to be regulated. By allowing solicitors to work in the alternative legal services market, with the individual protections that apply to all solicitors, we will add to the protections available to consumers. Clients who want or need the additional protections that are guaranteed with SRA regulated firms can still access those and will be able to continue to do so in the future. Solicitors working in the alternative legal services market will need to deal with their clients in accordance with the core professional principles and standards set out in our Code. This includes managing conflicts of interest, acting in the best interest of clients and upholding the rule of law.
26. Through widening choice and access to justice we are promoting the public interest. Examples of how our reforms may impact on the development of the legal services market are provided in Table 1. The impact on consumer protections is illustrated in Table 2. We have also made changes that we think maintain trust in the profession and the integrity in court proceedings and administration of justice.
27. We have considered the risk of consumer detriment that arises under the market scenarios our proposals permit. Compared to now, consumers would only be

⁴⁹ <http://www.sra.org.uk/solicitors/handbook/intro/content.page>

⁵⁰ <http://www.sra.org.uk/solicitors/handbook/practising/content.page>

⁵¹ [Economic Value of the Legal Services Sector](#) March 2016, Law Society, March 2016

⁵² [Economic Value of the Legal Services Sector](#) March 2016, Law Society, March 2016

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disadvantaged in a particular set of circumstances. These are where they could no longer access a solicitor for their advice from a regulated firm; that they then encounter a problem with the legal advice provided and that there was not an appropriate redress mechanism. While we cannot eliminate this risk completely, our assessment is that this is unlikely and should be considered against the overall benefits of the changes.

28. An individual consumer could also be disadvantaged if they unknowingly accessed legal advice believing it was from a fully regulated provider and it was not. The consumer protection landscape in the legal services market is already poorly understood by consumers and they may assume all services are regulated⁵³. Our plans to improve the information that is available to help consumer choose legal services wisely is set out in our consumer support strategy.⁵⁴
29. Our overall assessment is that these proposals are positive because they have the potential to help increase the supply and variety of legal services to benefit consumers. This is supported by the independent economic assessment of the impact of our proposals. In general terms this assessment indicates that consumers can be expected to benefit from the proposed changes to the extent that they:
 - widen the variety and number of providers and delivery mechanisms available for consumers to access legal services;
 - allow consumers increased access to solicitors who have met a high standard of educational attainment and professionalism;
 - allow some consumers to trade-off certain protections for other benefits; and
 - result in more intense competition and innovation which might ordinarily be expected to deliver lower prices, alternative pricing arrangements, higher quality and new products/services.
30. Overall this may draw more consumers into the market and address concerns about unmet need. On the other hand, the report suggests that there is a risk of some adverse consumer impacts to the extent that any changes:
 - fail to address, or conversely increase, confusion around the different protections attached to services;
 - result in the professionalism of solicitors being eroded or seen to be eroded through practise in the alternative legal services market.

EDI Impacts

31. There are series of equality and diversity impacts identified in the report. We think overall that our proposals will have a positive impact on the diversity of the profession. This is because they would remove restrictions that are limiting now the range of types of organisations that solicitors can work without relinquishing their

⁵³ [Legal Services Consumer Panel Work Programme 2015-16](#)

⁵⁴ Include link to consumer support strategy

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professional title. On the whole, we expect our proposals to contribute to a more competitive market better placed to innovate and respond to the needs of different groups of consumers - including vulnerable consumers.

32. We have considered a number of specific EDI risks – alongside considering possible mitigations to these risks. These are that:
 - a. the changes to how the Codes in particular a move away from prescriptive rules result in a disproportionate or particularly high burden on small firms (and therefore for some Black and Asian and minority ethnic (BAME) and older solicitors because of they are disproportionately represented in small firms and sole practices) (see paragraphs 60-62);
 - b. small firms (similarly impacting disproportionately on some BAME and older solicitors) will suffer detriment because they are less able to take advantage of the market developments (see paragraphs 75-80);
 - c. that certain group of consumers in particular vulnerable consumers/those with protected characteristics are disadvantaged (or unable to benefit from) the potential changes in the legal service market (see paragraphs 107-121).
33. Our aim is to remove restrictions that reduce flexibility enabling the market to innovate and grow. We have linked where possible key potential market impacts to the independent economic assessment. But we cannot predict the market impacts with certainty. Where we have identified a potential negative equality impact from ways in which the market might change – either on firms or particular types of consumers - our focus will be on how best to mitigate these.

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Revised Principles and Code of Conduct

34. We know⁵⁵ that many that we regulate consider the current Handbook can be confusing and difficult to navigate. It is not always clear to whom particular obligations and expectations apply. This creates uncertainty adding to the cost of regulation. Firms also think⁵⁶ too much time is spent keeping up to date and complying with regulation. This, alongside Professional Indemnity Insurance (PII) and compliance with information requirements, are seen by the sector as the highest costs of regulation.
35. The redrafted codes have removed duplication, are shorter, more narrowly focused and clearer in defining the boundary between individual and entity regulation. They are intended to provide a clearer expression of the behaviours and standards expected from solicitors and the businesses that we regulate and for these to be easily understood and owned by the profession. The approach we have adopted is set out in the *Rationale Document (Annex 5 of the consultation)*.
36. Instead of the current indicative behaviours or expansive outcomes describing more general requirements, compliance with the new rules will be supported with guidance, toolkits and case studies. Please see Section 2 of the consultation document for further information. In addition, alongside the proposals we are undertaking a programme of work to allow users to access the handbook in a modern and digital way.
37. On the whole we have sought to deliver a simpler articulation of our current requirements as opposed to a new series of obligations on those we regulate. But in drafting the new draft Codes we have identified a small number of areas where we consider that protections were lacking or that requirements were not as clear as they should be. Where this was the case, we have added new requirements (for example, obligations to "know your client" and only to act on instructions). We have also adapted the Code for Individuals to ensure that it would apply equally to those working within and outside of a SRA authorised firm.
38. We have also clarified relationships between principles and standards, which has previously been identified as an area of confusion.

Impact on Firms

39. The redrafting of our requirements should make it clearer and easier to understand what it means to be regulated in this sector for everyone. The changes proposed also have the potential to reduce some of the more significant costs of compliance including:
 - lowering the cost of training;

⁵⁵ Feedback from external users of the Handbook November 2015

⁵⁶ [The regulated communities' views on the cost of regulation](#), LSB, March 2015

- compliance with information requirements which are currently spread across different parts of the handbook;
 - maintaining an ongoing understanding of changing regulations; and
 - record keeping and processes of dealing with rule breaches.
40. All of these areas have been identified as areas of high incremental cost.⁵⁷ Cost savings will also arise from solicitors and firms no longer complying with redundant or duplicated requirements and from the streamlining of responsibilities. By adopting a structure which distinguishes between individual and firm regulation, we have also significantly reduced the overall requirements on firms and individuals. Therefore, we expect the cost of regulation to fall over the long term.
41. We are not significantly changing the standards expected of solicitors and firms. Firms that are currently complying with the existing Handbook will not suddenly find themselves needing to change what they do because they are in breach of the new Handbook.
42. The new approach also sees another improvement from our current Code by providing clarity about the requirements for in-house solicitors. They will now be put on an equal footing with other solicitors and bound by the same Code, rather than as a separate, often complex, addition to each section.
43. In addition, the redrafting of the Codes should enable solicitors and regulated firms to take advantage of the greater flexibility afforded them in choosing how to comply with principles or standards to experiment and innovate. This could potentially reduce compliance costs allowing more competitive pricing.
44. Our approach to guidance and toolkits will allow compliance support material to emerge more rapidly in response to market developments.
45. We recognise that the actual reduction in uncertainty and therefore the cost of regulation will depend on the effectiveness of the measures, including online resources and toolkits we introduce, to help solicitors and firms comply with the re-drafted handbook. We have already built toolkits to support our Training for Tomorrow reform programme and to support the recent changes we have made to the Consumer Credit rule. Feedback from a survey we carried out showed that 90 per cent of those respondents that have adopted the new approach to continuing competence already had found the toolkit useful⁵⁸.
46. Having the Handbook available in an online digital format will also provide a number of key benefits to solicitors and firms:
- **Searchable** - It is easier to find material that is required, particularly when the Handbook is shorter and simpler to navigate;

⁵⁷ [The regulated communities views on the cost of regulation](#), LSB. March 2015

⁵⁸ SRA survey, February 2016.

- **Accessible** - It makes the Handbook available both for Solicitors, those with an interest in the legal services industry and for consumers who wish to understand their rights and the responsibilities that solicitors must operate under. The online version can also be adaptable to meet the needs of the visually impaired.
 - **Cost** – The online version will be free to use thereby reducing costs;
 - **Current** - Unlike a printed edition, the online Handbook is dynamic and therefore always up-to-date with the latest changes or reforms.
47. There may be some transitional costs associated with solicitors and providers having to adjust to changes that may be implemented. This might include the cost of external training in order to embed the approach. There may be some relatively minor costs associated with changing compliance systems to be geared up to the new Handbook. We do not expect these to be significant but will engage with firms and individuals from the compliance sector to understand these in more detail ahead of our final decisions.
48. We are committed to make sure that people engage with and understand our Handbook proposals⁵⁹. We have worked with the profession to review and clarify guidance on the individual and firm obligations. In addition to toolkits and guidance, we will also be developing a comprehensive communications strategy for stakeholders and a range of digital content. We will also have roundtable discussions with specific stakeholders and run a number of workshops to share our thinking. This demonstrates how our new approach is intended to clarify our requirements.

Impact on Consumers/Public Interest

49. Proposed improvements to the accessibility and usability of the on-line Handbook will make it easier for consumers as well as the wider public to find out and understand how we expect solicitors to act, and the standards and service they should expect.
50. Our supporting materials will highlight the potential benefit of using a solicitor who must uphold a set of principles and standards when providing certain services or hold particular roles that carry a risk of harm. They provide a framework for ethical and competent practice in line with a prevailing obligation to act in the public interest, and to maintain public confidence/rule of law.
51. We have also clarified a number of standards that are designed to maintain trust in the profession - including by consumers - and the integrity in court proceedings and administration of justice. Specifically, we have clarified our requirements on due diligence in establishing a client's identity and only acting on valid instructions. We have included as a principle a solicitor's conduct needs to uphold public confidence in the profession and those delivering legal services.
52. Public confidence and trust in solicitors including those that under our proposals could work in businesses in the alternative legal services market is significantly impacted by how we supervise and enforce these standards. We are currently

⁵⁹ Reference the consumer support strategy

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undertaking a comprehensive review of our enforcement strategy and the decision-making framework that we use in both supervision and enforcement matters. In addition to a comprehensive internal review and streamlining of this framework, we are using feedback (gathered from thousands of stakeholders as part of the recent Question of Trust consultation) to help inform and shape our initial thinking and proposed approach.

53. With freedom and flexibility comes responsibility - it is core to the concept of being a professional. It is what other lawyers rely upon (e.g. through undertakings) and it is also what the public expects (as our Question of Trust work makes clear). We trust solicitors and firms to use this flexibility to deliver an increasingly wide range of legal services that meet consumer demand, and meet the regulatory standards we set for them.
54. If things do go wrong, we will take a proportionate response. But where we find that solicitors or firms have wilfully, carelessly or negligently misused their freedom, or have abused their position, then that response can be robust. Within our enforcement strategy, we will look at the context of the wrongdoing, and how serious we believe the issue to be, given full consideration of the circumstances. Although the new Codes cover all aspects of a solicitor's conduct (or an entity's management), we will consider each report on a pragmatic case by case basis - taking full account of all the evidence. This may mean that we take into account private conduct in some cases. We will also consider the relative seniority of the wrongdoer, and the degree of harm caused (and to whom) when considering regulatory sanctions. Patterns of behaviour will also be relevant.
55. We believe that the new Codes, taken together with a clear and defined enforcement strategy will help both the SRA and solicitors to understand and meet our standards.
56. We do not think that our changes will negatively impact on our ability to take enforcement action where it is needed. We are not getting rid of core fundamental requirements of solicitors and firms. The revised drafting will make it clearer what we are enforcing against.

Impact on EDI issues

Principle 5

57. We are consulting on a revised set of Principles that we think better reflects the fundamental tenets that we expect those regulated by us to uphold. Reflecting the importance that we continue to attach to equality issues we propose to retain as the new Principle 5 that solicitors must act in a way that encourages equality, diversity and inclusion.
58. We will continue to require solicitors and authorised firms to act in a way that encourages and promotes equality and respect for diversity. They will continue to monitor report and, where appropriate, publish workforce diversity data.

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59. The Code standards and the Principles are equally enforceable and are not interdependent. However, the Code refers more specifically to expected practise standards, which is context specific, rather than overarching values and behaviours.

Other EDI impacts

60. We have particularly considered whether there could be any negative impact on small firms bearing in mind that BAME solicitors are disproportionately represented in small firms and sole practices.⁶⁰ Personal choice is not the only factor; some BAME solicitor have reported facing barriers to accessing more financially lucrative areas of the profession such as corporate law in larger firms⁶¹.
61. Smaller firms may face disproportionate costs in having to assess how to comply with their regulatory requirements particularly where they are less prescriptive.⁶² Over half of sole practitioners⁶³ think fees and compliance costs are poor value for money. This contrasts with the majority of firms with over 50 employees who see fees and costs as either reasonable or high, but not excessive.
62. We have shared our proposals and specifically engaged on possible impacts with our small firms and equality virtual reference groups. Feedback from small firms and sole practitioners so far has is that the development of separate individual and firm Codes is welcomed together with tools that support firms to be compliant. Specifically to mitigate this risk, as we implement the changes we will work very closely with small firms and medium sized 'high street' practices to developing a tool kit of specific guidance and case studies to help them understand how to comply⁶⁴.
63. We have not identified any other specific EDI issues arising from the changes we are proposing to the Principles and Code of Conduct, but we will continue to monitor this area as part of our review framework.

⁶⁰ <http://www.sra.org.uk/sra/equality-diversity/diversity-monitoring/diversity-monitoring-2013.page>

⁶¹ Evidence on a number of key areas where there is a lack of diversity in law firms is set out in <https://www.sra.org.uk/risk/outlook/risk-outlook-2015-2016..>

⁶² Performance-Based Regulation: Prospects and Limitations in Health, Safety and Environmental Protection. C.Coglianesse, J.Nash and T.Olmstead (December 2002). The authors note that principles/outcomes based approaches can impose excessive costs on smaller firms because they have to search out ways of complying, and that some firms may simply prefer to be told exactly what to do.

⁶³ <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf>

⁶⁴ [Link to document setting out strategy once available](#)

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Removing restrictions where solicitors can practice

64. Currently our rules prevent businesses in the alternative legal services market from employing solicitors. These rules go beyond the requirements in the Legal Services Act⁶⁵. This is not the case for some other legal professionals who can currently work in a range of types of businesses including alternative legal services firms. We think this means we are restricting options for the public and businesses to access legal services provided by solicitors that offer public protection, value and are responsive to consumer need. We think our regulation needs to change to reflect current market realities and ensure market access for pro-competitive innovations.
65. We think that consumers should be able to choose from a range of provider options. Our proposals will not prevent consumers' current choice between regulated and alternative businesses. Instead they introduce new options to go to a solicitor in the alternative legal services market, with the additional individual protections that apply to all solicitors. Potentially, consumers may choose to trade off the further enhanced protections they would get if they paid for a solicitor working in an SRA regulated firms against not accessing the service of a solicitor at all.

⁶⁵ <http://www.legislation.gov.uk/ukpga/2007/29/section/21>

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TABLE 1: Examples of market developments our proposal permits

Scenario	Examples	Likelihood
A. Existing legal businesses offering non reserved legal advice employ solicitors to undertake/supervise work previously done by less qualified staff	Will writing firms employ solicitors	We think this scenario is probable. The significant body of consumer research across legal service market clearly shows that the public and small businesses are looking for more affordable options to access services of a solicitor in particular for complex and contentious issues. By employing a solicitor, the business gains an element of quality control and brand enhancement. The consumer research also suggests that consumers rely on reputation, branding and other signals of quality when navigating the market rather than the specific differences in consumer protections that exist.
B. Existing business currently employing in-house solicitors start to provide non reserved legal services to the public	Local Authority deploys existing solicitors and/or employs additional solicitors to provide legal advice to public without need to be licensed by the SRA	We think this scenario is probable. A survey of local authority legal teams indicates significant appetite from local authorities to offer legal service through being authorised as an ABS ⁶⁶ . Lifting restrictions will enable any business employing solicitors in-house ⁶⁷ , including a local authority to carry out non reserved services to the public alongside their core business with proportionate and targeted regulation. We have already granted waivers to our current rules to permit this. We have granted 81 limited waivers, with the majority granted to local government bodies and advice services. Around 45 of these organisations also have waivers to permit them to hold client money, again with many of these being law centres and charities. ⁶⁸

⁶⁶ ". <http://www.legalfutures.co.uk/latest-news/local-government-lawyers-get-advice-from-gc-in-dispute-with-sra>

⁶⁷ 27,300 practicing solicitors that currently work in house (18% of all solicitors and this number is growing)

⁶⁸ Internal data (up to June 2015), Solicitors Regulation Authority, 2015

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<p>C. Existing businesses delivering other services diversify into legal services and employ solicitors</p>	<p>High street brands such as banks, supermarkets and insurance companies enter the market</p>	<p>We think this scenario is probable. Consumer research suggest the public are more ready to consider new providers such as financial services or supermarket and other brands for legal advice.</p>
<p>D. New firms set up to provide non reserved legal advice and employ solicitors to undertake and/or supervise work</p>	<p>New innovative start-ups including niche providers</p>	<p>We think this scenario is probable. These firms will potentially have a lower cost of regulation, will be well placed to compete on price in the alternative market and to deliver new and niche services. This option could appeal to solicitors wanting to try new things but without needing to relinquish title.⁶⁹</p>
<p>E. Increasing numbers of existing firms regulated by SRA separate non reserved services into a discrete business to compete with firms in alternative legal services market whilst still using qualified staff</p>	<p>Our Separate Business Rule (SBR) changes implemented in rules implemented in 2015⁷⁰ already permit this.</p>	<p>We think this scenario is probable. There is currently limited evidence that large number of firms are planning to split their non-reserved services into separate businesses. However, when we consulted on the SBR changes that firms told us that they would delay consideration of restructuring until changes allowing solicitors to work in these businesses had been made.⁷¹</p>
<p>F. Existing firms decide to deliver only unreserved legal services and move out of SRA entity regulation whilst still employing solicitors</p>	<p>A large City firm moves out of SRA regulation A small high street firm that offers a large proportion of</p>	<p>Currently, It is difficult to assess the appetite of firms to completely move out of SRA regulation. This will in practice be driven by consumer demand and business choices. Whilst larger firms may have greater opportunity due to the volume of non-reserved work to restructure their business in this way their client base may be attracted to entity regulation. Smaller firms may be less likely to restructure in this way but will face less direct competition for reserved services from those that do so.</p>

⁶⁹ [The Future of Legal Services](#), Law Society, January 2016

⁷⁰ <http://www.sra.org.uk/solicitors/handbook/code/part5/rule12/content.page>

⁷¹ Response from City of London Law Society response to the Separate Business Rule (SBR) proposals: <https://www.sra.org.uk/sra/consultations/separate-business-rule.page>

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	unreserved services stops offering reserved services	
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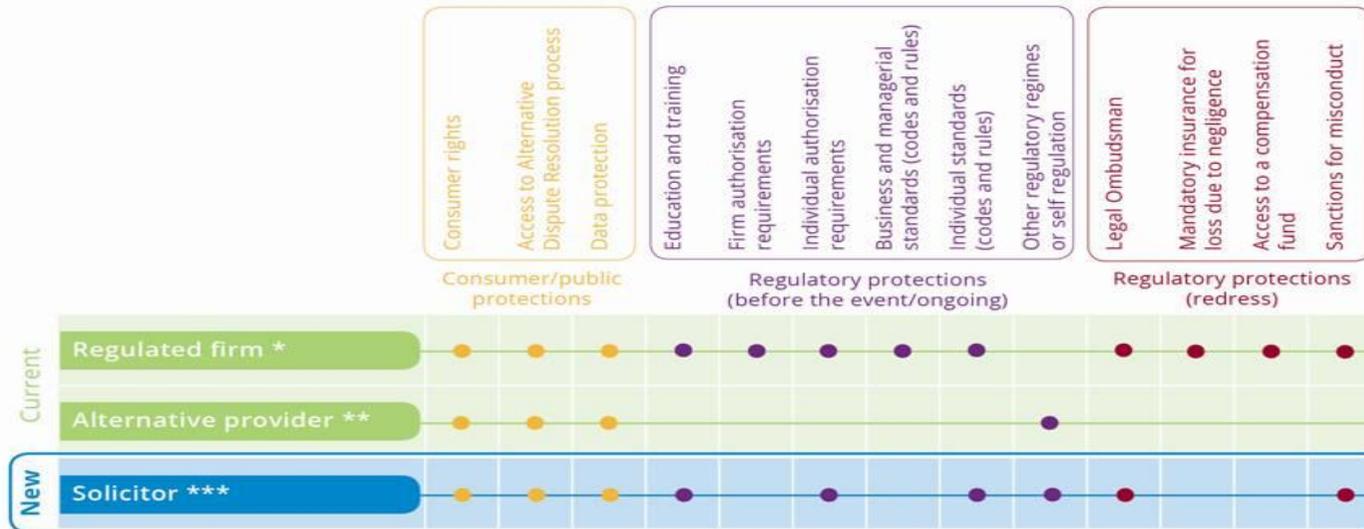


TABLE 2: Impact on Consumer Protections Landscape



A changing landscape for solicitors providing legal services

This table sets out the impact on public protection from our proposals to free up solicitors to provide some legal services working in a business that is not regulated by the SRA or another approved regulator.



- * The full range of legal advice provided by a Solicitor (or other authorised person) working in a firm authorised by the SRA or another approved regulator. This advice includes *reserved* legal activities - the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.
- ** Legal advice that is *not reserved* provided by a legal advisor working in an alternative legal services provider(ie one that has not been authorised by the SRA or any other approved regulator or another legal services regulator).
- *** Legal advice that is *not reserved* provided by a Solicitor working in an alternative legal services provider.

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Impact on the legal services market

66. The Government has recently re-emphasised the contribution that open and competitive markets can have on productivity. Markets stimulate innovation, help to increase productivity, and ultimately support consumers via economic growth⁷². Our proposals allow for further competition and choice for the public and businesses to access legal services, boosting growth in a sector that is already growing over two and a half times faster than the economy as a whole⁷³. Growth in legal services contributes to the wider economy, boosting investment and jobs. The Law Society estimates⁷⁴ that each £1 of extra turnover in the legal sector stimulates £1.39 in the rest of the economy and 100 extra jobs in legal services supports a further 67 in the wider economy.
67. Recent research suggests that cost is now considered to be the most important factor when seeking a legal services provider⁷⁵. Price and value for money are also increasing considerations for corporate consumers. A recent report has observed a shift by in-house counsel seeking to move corporate work away from mid-market law firms to cheaper options including alternative providers. The report suggests the commoditisation of legal services and technological developments are important factors in this trend.⁷⁶
68. Our independent economic analysis suggests that those providing alternative legal services are seen as having a cost advantage, as they do not have to make payments to support the regulatory framework including financial protection arrangements such as compulsory insurance, the Compensation Fund. Our proposals provide options for solicitors to deliver non reserved legal services delivery with less regulatory burden although solicitors with additional skills and training may attract a cost premium when offering services through an alternative legal services provider.
69. Table 1 above provides examples of how our proposed reforms may impact on the development of the legal services market. Our initial view is that scenarios A to D are the most likely to emerge in any numbers. This aligns with our key aim, which is to allow bodies that previously would not have done so, to employ solicitors to provide services to the public. These changes would, in our view, represent a positive development within the alternative legal services market. They would prove beneficial not only to a wide range of consumers (by increasing scope of access) but also to the solicitor profession (by providing increased employment opportunities).

⁷² A better deal: boosting competition to bring down bills for families and firms, HM Treasury, November 2015

⁷³ p.3 [Economic Value of the Legal Services Sector](#), Law Society March 2016

⁷⁴ [Economic Value of the Legal Services Sector](#), Law Society March 2016

⁷⁵ Legal Services 2016, You Gov, February 2016

⁷⁶ [Mid-market firms losing corporate work "by stealth", report says](#). Report by TGO Consulting reported in Legal Futures 16 May 2016

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70. Scenario E can already happen under the current arrangements: non-reserved services can be provided by a separate business, or a solicitor can present themselves as a 'non-practising solicitor'. With the changes we propose, solicitors would hold themselves out transparently as practising solicitors, and they would be subject to all the requirements of the SRA Code for Solicitors⁷⁷ thereby providing proportionate consumer protections.
71. The extent to which scenario F happens will, in practice, be driven by the value that private and commercial clients place on the consumer protections accompanying entity regulation as well as business choices. We consider this scenario further in the analysis of consumer detriment in paragraphs 88-91 below.
72. We have designed our regulations to provide a flexible framework for everyone who delivers reserved legal services. Through our review, we aim to develop a framework that is flexible enough to allow the Legal Services Board (LSB) to consider ending transitional arrangements that currently apply to special bodies to bring them within SRA entity regulation.

Market impacts - small firms

73. The largest 200 firms we regulate are predominately corporate law firms representing over 50 per cent of the solicitor market by turnover. The majority of firms we regulate are much smaller primarily serving personal customers and smaller businesses rather than corporate clients. These firms have faced significant pressures on revenues and profits over several years. Within this category, nearly 50 percent of our firms are very small with four or fewer partners.
74. It is difficult to estimate the amount of reserved and non-reserved work solicitors undertake. However, by considering annual renewal information, where solicitors attribute percentage of turnover to specific legal work categories, we can gain insights by using these categories as a proxy. For example, "personal injury" is treated as reserved whereas "social welfare" is treated as non-reserved. However, we recognise that this can only be an estimate. Aspects of legal work undertaken for a specific client on a "social welfare" matter could conceivably involve the provision of reserved legal activity, such as litigation.
75. Our data shows:⁷⁸
 - a. nearly 70 per cent of small firms' turnover is generated from work that includes a reserved activity. In addition, the largest segment of non reserved work type is from immigration advice which would still be undertaken in a regulated firm;

⁷⁷ Code for Solicitors RELs and RFLs [2017] Need link

⁷⁸ Based on data we collected from firms (annual renewals forms) for 2014-15.

- b. in contrast for the very largest firm this split is almost reversed – with 64 percent of turnover from non-reserved work coming mainly from commercial corporate legal services;
 - c. medium and large firms have a similar profile to our smallest firms, but with less of their non-reserved work as a percentage of turnover derived from immigration advice
76. Smaller firms are likely to face particular challenges in adapting to a changing market. How they can respond to the competitive threat of solicitors providing services in the alternative market is more limited as they mainly provide reserved legal services. Larger firms are more likely to be able to bear the fixed costs of restructuring their businesses if they choose to set up a separate business for non-reserved services. Economies of scale are also important in enabling volume-driven legal businesses to offer much lower cost services, in a viable way. Small firms may also face competition for non reserved services from new entrants with lower regulatory costs.
77. Mitigating this risk, local firms situated on the high street are more able to adapt to providing the transparent, consumer-friendly and cost effective service, using up-to-date technology that consumers demand. Firms that build upon their 'traditional' role within the community may be able to develop this profile perhaps linking up with other professional service providers such as accountants and benefit from it.⁷⁹ Their size may mean they are more likely to be adaptable and can change their overall business approach more easily. This contrasts with larger firms, who will require change programmes in order to shift culture and behaviours that have become entrenched in their organisation.⁸⁰
78. Firms that remain regulated by the SRA will also continue to benefit from exemptions from authorisation by another regulator in areas of work such as immigration, financial services⁸¹ and the provision of regulated claims management services. This benefits small firms that are able to provide these services without incurring further regulatory costs.
79. We do not think that small firms will suffer detriment because they are less able to take advantages of the new business structures the proposals allow, or that they are intrinsically less capable of adapting in a changing market place. These are structural features of the market and we do not think it proportionate to maintain restrictions across the market as a whole.
80. Given the increasing numbers of solicitors nearing retirement age, one rational response might be for some small firms to close or sell their businesses. Over a third of solicitors aged from 41-60 work in sole practices.

⁷⁹ [The Future of Small Law Firms; Jeopardy or Opportunity](#) by Robert Farquharson, LexisNexis, 2009

⁸⁰ p.13 [Developing legal talent: Stepping into the future law firm](#), Deloitte, February 2016

⁸¹ Where the firm can satisfy the requirements set out in Part 20 of the Financial Services and Markets Act 2000

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In small firms of between 1-4 partners, over a quarter of all solicitors who work there are also in the 41-60 age bands. Nearly 65 per cent of individuals in sole practices and firms with 1-4 partners are men⁸².

81. The *Future of Legal Services* report highlighted an increasing number of solicitors nearing retirement age but could not actually afford to stop working. This was because they faced considerable costs if they wished to close their firm, particularly related to professional indemnity run-off cover. We are considering this issue as part of a fundamental review of the Minimum Terms and Conditions of Solicitors mandatory professional indemnity insurance arrangements.

Impact on Consumers

82. Our proposals are intended to allow greater competition and choice in areas of law with growth potential because there is unmet legal need. We know for example that a significant proportion of the population do not have a will⁸³. In the case of small firms, the most common problems relate to trading, employment and taxation. Other businesses were the main source of problems. The vast majority of firms in this sector currently have little contact with a legal adviser. Less than one in ten small firms either employed in-house lawyers or had a retainer with an external provider. Over half of firms experiencing a problem tried to resolve it themselves, more often seeking advice from an accountant than a lawyer. This indicates there is substantial legal need not currently being addressed from existing suppliers of legal services.
83. We are introducing greater flexibility for businesses to employ solicitors potentially providing these types of services at lower cost, whilst maintaining an appropriate level of consumer protection. Solicitors who may in the future work in the alternative legal services market will still need to meet the same ethical standards and demonstrate the same behaviours as solicitors working in SRA-authorized businesses.
84. We anticipate that our proposals could result in better and cheaper access to qualified solicitors. They bring the SRA in line with other legal services regulators, such as the Institute of Chartered Accountants in England and Wales (ICAEW), Council for Licensed Conveyancers (CLC) and the Chartered Institute of Legal Executives (CILEX) which do not have similar restrictions to those currently included in the SRA Practice Framework Rules 2011.
85. A consumer's right to select a fully regulated business for a legal service will not change, nor their option to choose legal advice from a business in the

⁸² (unpublished) Diversity Monitoring of our regulatory outcomes: Annual Report of 2014 data, SRA, May 2015

⁸³ <http://www.lawsociety.org.uk/news/press-releases/millions-of-britons-have-no-will/>

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alternative legal services market. The impact of our proposals on consumer protections is explained in more detail below in paragraphs 90-91 below.

86. By removing restrictions where solicitors practice, our proposals aim to introduce the right conditions for more innovation and better position solicitors to take up new commercial opportunities that are more directly in line with consumer needs. A report published by the Law Society highlight a possible future where more solicitors exploit the developments in the consumer market by relinquishing official use of the solicitor title and setting themselves up as non-lawyer and/or unregulated providers.⁸⁴ A scenario where fewer solicitors are providing affordable services to people in need will not be in the consumer interest, in the interests of the rule of law or the proper administration of justice.

What is the potential detriment to consumers?

87. We have already amended the Separate Business Rule (SBR) to make it easier for firms to offer non-reserved work outside the scope of our regulation. Building on the analysis undertaken for the *Separate Business Rule (SBR) reforms*⁸⁵, detriment could arise from our current proposals if the market changes such that consumers no longer have a choice to access the services of a solicitor for non reserved areas of law in a regulated firm. A detriment would still only exist if they received a defective service⁸⁶ that could not be remedied by the range of consumer protections that would still be available to them.
88. Whilst we cannot eliminate this risk completely our assessment is that this is unlikely and should be considered against the overall benefits of the proposals to enable a more effective and diverse legal services market.

Loss of access to regulated firms

89. Loss of access to regulated firms could happen if the market developed in the way described in Scenario F. There may be some firms that we regulate now that decide to move some or all of their legal services out of SRA entity regulation. For commercial legal services we expect the extent to which firms move their services completely outside of our firm regulation will be driven by the requirements of relatively sophisticated corporate and business consumers. There are a number of factors that will tend to limit the amount of work that firms will transfer into a separate business. These include:
- a. the desire not to lose the marketing value of a regulated brand;
 - b. informed clients may wish to remain with a regulated provider –for example for reasons of legal privilege;

⁸⁴ [The Future of Legal Services](#), Law Society of England and Wales, 2016

⁸⁵ [Separate Business Rule impact assessment, November 2014, SRA](#)

⁸⁶ 'Defective service' in this context includes negligence, dishonesty, breach of confidentiality

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- c. the financial benefits to firms of moving cases out of SRA regulation may be limited;
 - d. restrictions in other jurisdictions on sharing profits with unregulated entities may prevent large international firms from taking advantage of the changes.
90. We also consider there would be greater harm if private clients were left without the choice to go to a provider offering all the usual consumer protections. Smaller firms are more likely to undertake private client work, including one-to-one services on personal and commercial matters. As set out in paragraph 74 above over three quarters of small and medium-sized firms' income is currently derived from reserved activities covering residential conveyancing, probate and criminal litigation. These firms are also significant providers of immigration services which under our proposals will continue to be only provided by solicitors working in regulated firms⁸⁷.
91. It seems reasonable to propose that very significant numbers of existing small firms will continue to deliver both reserved and unreserved services through a regulated firm. Their strength lies in their location, their cost base and the profile of the services they provide.
92. We cannot eliminate the risk of loss of access to a regulated firm, but our assessment is that this is unlikely. Particularly for individuals and small business consumers. Any risk needs to be offset against the overall potential benefits of the changes, especially those enabling businesses in the legal market to continue to better meet consumer expectations with more credible and affordable choices of legal services.

Responding to a legal service problem caused by a solicitor working in an alternative legal services provider

93. Our data suggests that the overwhelming majority of conduct issues and complaints about solicitors are about reserved areas of law, in particular litigation work and conveyancing.⁸⁸ This is unsurprising as these areas of law are often contentious and can involve significant amounts of client money. It is also acknowledged that consumer satisfaction can be expected to be lower in contested areas of law.⁸⁹

⁸⁷ either an approved legal services regulator or by the Office of the Immigration Services Commissioner (OISC)

⁸⁸ Again for the purposes of this section, any work that is unlikely to include the provision of a reserved legal activity, is called "non-reserved". For example "personal injury" is treated as reserved where as "social welfare" is treated as non-reserved

⁸⁹ [Tracker survey 2015 Briefing note: how consumers use legal services](#), Legal Services Consumer Panel, 2015

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94. Based on the number of possible misconduct reports we receive, solicitors carrying out of a reserved legal activity are over seven times more likely to be reported. This compares unfavourably to solicitors conducting non-reserved legal activity. Proportionately and relative to turnover, there are significantly more reports about reserved work compared with non-reserved work.⁹⁰
95. This suggests that removing restrictions to allow solicitors to provide non-reserved legal activities in the alternative market would not in itself result in an increase in consumer harm. The current evidence suggests a low level of conduct issues associated with these areas of law.
96. Stakeholders have identified a potential risk arising of a lower standard of advice offered by a solicitor working in firm we do not regulate. This is because of the lack of mandatory requirements for business level systems and controls to ensure quality. It has also been suggested that some solicitors, particularly those in more junior roles and/or not in a position of influence, may come under pressure to act unprofessionally. In the event that this occurred, then this in turn has the potential to weaken the solicitor brand, public confidence and trust in solicitors
97. Our initial view is that there will be strong incentives on solicitors working in the alternative sector to comply with outcomes in the individual code that sets out requirements making them personally accountable. As identified earlier in paragraphs 52 – 56, we recognise that we will need to adapt our supervisory and enforcement strategy to monitor these risks and enforce against these individual responsibilities.

Consumer Protections

98. The Legal Services Act does not require non-reserved legal activities to be regulated. By allowing solicitors to work in the alternative legal services market, with the individual protections that apply to all solicitors, we are adding to the protections available to consumers. Clients who want or need the additional protections that are guaranteed with SRA regulated firms can still access those and will be able to continue to do so in the future. Solicitors working in the alternative legal services sector will need to deal with their clients in accordance with the core professional principles and standards set out in our Code, including managing conflicts of interest, acting in the best interest of clients and upholding the rule of law.

⁹⁰ Of 12,445 regulatory reports received in the 12 month period 1 September 2013 to 31 August 2014, 59% were related to a work type that was a reserved legal activity compared to 8% that related to a work type that was a non-reserved legal activity. The remaining reports could not be allocated to a relevant law type of were unknown. This analysis related to 2013-14 where firm reported 54% turnover as including a reserved activity and 46% as non reserved.

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99. Individual solicitors will be subject to the same expectations and standards and to the same enforcement and disciplinary processes and other sanctions, irrespective of where they choose to work.
100. In our consultation paper we explain that whether Legal Professional Privilege would apply where a solicitor working at an alternative legal services business provides legal advice to a client is a matter of substantive law. We have no power to affect the ambit of this substantive law. Where a solicitor working in an alternative legal services firm prepares advice for that firm and provides that advice to a client of the firm, no legal professional privilege will arise. It remains for the individual solicitor to explain to their clients what level of protections they can expect.
101. If practising as a solicitor (within or outside of the alternative legal services market), an individual will need to hold a current practising certificate (PC). This helps resolve the potentially confusing situation for consumers where solicitors who are providing non-reserved services to the public, describe themselves as 'non practising solicitors'. They will be a 'practising solicitor', and will hold themselves out, and market themselves transparently as one.

Consumer information

102. An individual consumer would be disadvantaged if they unknowingly accessed legal advice thinking it was from a fully regulated provider and it was not. Our proposals reinforce the need for clients to have better information about the choices available to them and the different types of consumer protections that apply across the legal services market. We know that legal services are for many consumers a relatively rare event, driven by sudden needs, and that the legal market can be a fairly confusing place. Individuals do not have immediate benchmarks against which to judge the standard of service including the quality of legal advice provided.⁹¹ They rely on reputation, branding and other signals of quality when navigating the market, rather than the specific differences in consumer protections that exist.
103. Our market analysis and consumer research findings point to the availability of accessible and credible information about lawyers and legal services. This is a cornerstone for consumer empowerment and to supports their ability to play an active role in driving competition in the market. We want to help people to make informed decisions when buying legal services. We know that consumers look to regulators for authoritative and reliable information.
104. We will improve the accessibility of SRA regulatory data for consumers and other stakeholders. We have already started with the launch of 'Firm Search' on our website, and new processes for data re-users to access and make use of that data. This new facility responds to the Legal Services Consumer Panel's recent calls for action to the legal regulators, but also embraces the

⁹¹ ['Quality in legal services'](#), Legal Services Consumer Panel, 2011

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Government's Public Data Principles by making information on the firms we regulate freely available to all re-publishers, for example comparison websites. This is a first step that makes our basic data freely available but we are looking at how best to open up access to more regulatory information. This will include seeking views from stakeholders about and the collection and supply of a broader range of regulatory information including for example relating to first tier complaints, conduct and service performance and how this can feed into a new SRA open data model.

105. As well as this work to make our regulatory data available we will:

- continue requiring solicitors to inform their clients about regulatory protections that apply to their work, and their rights to access the Legal Ombudsman's services. Solicitors have a specific requirement to ensure clients understand whether and how the services they provide are regulated and about the protections available to them. This requirement is also mirrored for firms;
- improve the level of information available to help consumers navigate the legal service market including new development of consumer guides/decision tools to provide jargon-free information about consumer rights, and help them make informed choices. Part of this will be to consider how best to build on the current signals we know consumer use to navigate the market including reputation, branding and other signals of quality;
- roll out a programme of consumer engagement during our 2016 consultation process including with members of the public and SMEs, roundtable events with consumer bodies and advice agencies.

How might impacts vary across different types of consumers?

106. Establishing the right conditions to encourage an innovative and competitive market should benefit all consumers, including vulnerable people. We are removing entry barriers that could be prevent new providers from offering innovative services that have the potential to improve market conditions, including for vulnerable consumers.⁹² Providers of legal services and members of the judiciary agree that unbundling allows some clients access to expert legal advice that wouldn't be available to them otherwise.⁹³ We want to encourage innovation. For vulnerable consumer this might mean the growing numbers of litigants in person in court⁹⁴ being able to access small packages

⁹² See also independent economic assessment p 48 – changes in principle could allow solicitors to offer a differentiated service working in an alternative legal provider by capitalising on their specific qualifications, skill and expertise to compete against existing providers.

⁹³ [Qualitative Research Exploring Experiences and Perception of Unbundled Legal Services](#), Legal Services Board, 2015

⁹⁴ [Litigants in person putting pressure on courts system – LCJ](#), Law Society Gazette, 2014

of legal advice such as pre-court services. This would benefit both consumers and the rule of law. We are also removing regulations that have inhibited the delivery of pro bono advice. A significant amount of legal advice is already available to vulnerable consumers by special bodies such as law centres and Citizen's Advice, which are currently outside of SRA regulation. Our proposals would allow solicitors to be employed in any charity to provide advice relating to non reserved legal activity.

107. We have considered whether our proposals raise any specific risks to vulnerable people. Our report on providing legal services to this group explains⁹⁵ the factors that lead to a person suffering vulnerability in the legal service market. While dynamic and multi-faceted, there are particular areas of law which are likely to involve consumers at particularly high risk of experiencing disadvantage:
- I. criminal cases, where a consumer using legal representation services may face a possible loss of liberty, or may be held in custody;
 - II. immigration and asylum work, where a consumer may be facing persecution or even loss of life in another jurisdiction;
 - III. mental health law services, where a consumer may be experiencing poor mental health that has led to a need for legal decisions to be taken on their behalf;
 - IV. work funded by legal aid contracts, where a consumer is likely to have limited financial means and be dealing with a range of related issues, and
 - V. private and public family law work, where life-changing decisions about relationships and custody of children may hang in the balance.
108. In the consumer impact assessment of the changes we have made to allow solicitors to set up separate businesses providing non reserved legal services we concluded that factors affecting the supply of these services mean that consumers are well protected. Where a separate businesses would be allowed to provide legal services for example pre-proceedings advice to a private client in a family law case then the benefits of access to justice outweighed any potential loss in consumer protections. There are also very specific legislative requirements to protect vulnerable consumers including the Equality Act and the Mental Health Act that all businesses must comply with not just regulated firms.
109. The changes that we are proposing now add to these protections. This is because vulnerable consumers would have the choice to access a solicitor working in an alternative provider. Specifically, protections are enhanced because:

⁹⁵ <https://www.sra.org.uk/documents/solicitors/freedom-in-practice/vulnerable-people.pdf>

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- a. The responsibilities that we had identified as being particularly important when applied to standards of service for people who are vulnerable⁹⁶ remain in the proposed Codes and follow a solicitor whatever type of business they are working in. Solicitors must act with integrity, take into account their client's needs and circumstances and not take unfair advantage of their clients;
- b. The Solicitors' statement of Competence also sets out some very specific detail on what a proper standard of service for people who are vulnerable means including responding to and addressing individual characteristics effectively and sensitively;

⁹⁶ Page 7. <https://www.sra.org.uk/documents/solicitors/freedom-in-practice/vulnerable-people.pdf>

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Personal characteristics

110. Whatever the category of law, individuals may be vulnerable due to other factors. We have listed the personal characteristics and situations that are risk factors that could make someone more vulnerable in our report.⁹⁷ These might include age, disability, low literacy skills, cultural issues or lack of access to the internet.
111. On the whole, we expect our proposals to contribute to a market better placed to innovate and respond to the needs of different groups of consumers - including consumers with protected characteristics. There are examples of this in the current market - for example, 'Just For Kids Law' currently delivers legal services and advocacy exclusively for younger people. 80 per cent of young people with legal problems are also in at least one vulnerable group (such as being in care, being unemployed or a victim of abuse)⁹⁸.
112. As explained below, we may also see improvements in the diversity of the legal workforce and solicitors working alongside new people in potentially more consumer-friendly community environments. This in turn may help to reduce the distrust and suspicion that some groups, particularly BME clients, have of solicitors by increasing the opportunities for them to be matched with affordable legal solutions provided by solicitors that share some of their characteristics. A total of 14 per cent of people in England and Wales identify themselves as belonging to non-white ethnic groups⁹⁹ and people from black and ethnic minority communities experience civil justice problems more frequently than white individuals (40.9 per cent compared to 36.6 per cent) – however they also show the lowest levels of trust in legal professionals in the UK, with only 28 per cent of black individuals saying they trust them.
113. We have considered whether there are potential equality impacts for older people in a changing legal services market. Nearly half the UK's 7.1 million adults that do not use the internet are aged 75. They are potentially one group that is at higher risk of being left behind for example if they cannot benefit from technology-based innovation in the market such as online legal solutions and self-lawyering (or DIY law). There is a risk of legal services becoming more difficult to access if this is combined with a decline in access to face-to-face advice from a conveniently located firm.
114. While responding to the legal needs of older people, it is important not to categorise them as a single vulnerable group. Where they reside, their level of education and their income can have an important impact on their ability to deal with legal issues. There is no evidence that older people are particularly adverse to new technologies if these are appropriately designed and introduced.

⁹⁷ [Providing services to people who are vulnerable](#)

⁹⁸ '[Make our rights reality](#)', Just Rights, 2014

⁹⁹ '[Ethnicity and national identity in England and Wales](#)', Office for National Statistics, 2012,

115. The changes taking place on the high street, where services are being removed, are taking places across many areas of public life. Both government and financial services are areas where face-to-face services are being withdrawn and replaced with online and often remotely delivered options. Citizens of all ages are being forced to respond to the changed delivery of often vital services.
116. Our proposals remove restrictions that are a barrier to innovation. One area of potential innovation might be the introduction new delivery mechanisms as we have seen in other professional services.¹⁰⁰ Solicitors could offer potentially differentiated services by utilising their specific qualifications and skills and expertise but operating in innovative and different businesses. One example might be through retail outlets or other less intimidating or more convenient avenues.¹⁰¹
117. In practice, this should mean that consumers that rely on, or prefer, non-digital methods would also benefit, and where there is still a strong demand for face-to-face advice solicitors will have more freedom to grow their business to meet that demand.
118. Similarly, people living in rural communities may access services from their local community, and they may be potentially vulnerable if those services disappear or are not of the right quality. We have considered the potential risk of loss of access to a regulated firm in paragraphs 89-92 above. Our proposals remove restrictions, potentially opening up new opportunities for consumers to access non reserved legal services. This in turn may **improve** the geographic correlation between legal need and the availability of legal services provided by a solicitor.
119. Our consumer information programme will need to recognise that the potential for consumer confusion is more acute for some types of consumers. This may be because even if informed about the difference in protections between regulated and alternative providers, because of their vulnerability the consumer may not fully understand the consequences or risks attached to each. BAME consumers in particular are found to know the least about their rights and are less likely to speak to a consumer organisation such as Citizens Advice or Which if they encounter a problem¹⁰². Research also shows that people with learning difficulties can struggle to understand the language and approach used by legal professionals, which can increase their vulnerability throughout the legal services process¹⁰³

¹⁰⁰ In addition to the long standing presence of opticians providing services, Barclays Bank recently opened eight of their 'Essentials' style branches with Asda superstores. They will open later in the evenings and at weekends offering a full range of banking services

¹⁰¹ See also independent economic assessment p63, p48.

¹⁰² [BIS consumer protection survey](#)

¹⁰³ ['What happens when people with learning disabilities need advice about the law?'](#), University of Bristol for the Legal Services Board, July 2013

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120. Our stakeholder engagement on the changes specifically includes with representatives of vulnerable consumers. We recognise how important these groups are to help us develop our consumer information in an accessible way and to establish wide network of channels to distribute this information.

Impact on EDI Issues

Impact on the diversity of the profession

121. Removing the restrictions where solicitors can practise could contribute to reducing barriers to progression by expanding the range and diversity of organisations that they work in. A wider potential employment market, including alternative legal services businesses, could open up new career paths in some areas of law. Alternative legal services providers range from large professional services firms giving advice on employment matter, accountancy firms giving advice on taxation or business structuring to small single employee firms and niche providers such as will writing services¹⁰⁴
122. We have explained earlier in this report how we think existing small firms we regulate might be impacted by the changes in particular how they are able to adapt to a changing market. This group is central to our work as it represents 48 per cent of all firms we regulate and has a particularly high number of BAME solicitors working within it.
123. Importantly, a recently published Law Society report¹⁰⁵ distinguishes between competition taking place between existing solicitor firms and that involving solicitor jobs. The changes taking place in the next few years could mean that the number of traditional firms may be reduced, possibly significantly. However, if new providers enter the legal services market and expand demand and access to advice, this may result in more jobs being offered to qualified lawyers across a range of different corporate structures. The opportunities might include:
- Expansion of existing contract management and development of legal bidding sites to the benefit of consumers and allowing solicitors to develop careers in different ways;

¹⁰⁴ See also independent economic assessment p48 – the proposed changes will expand the choice options for solicitors in terms of the businesses through which they can deliver unreserved activities. This could lead to an even more diverse legal market and one consistent with suggestions there will be more opportunities for solicitors in the future.

¹⁰⁵ [The Future of Legal Services](#), January 2016, the Law Society

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- Greater opportunities for solicitors to embrace different, more technological channels of provision may find their career options are expanded in new types of legal customer-focused roles¹⁰⁶

124. Barriers to progression are likely to be reduced if the legal services market grows, with greater employment opportunities in a wider range of businesses created. More job opportunities for solicitors could have the effect of putting pressure on firms to ensure they are fair in the way they recruit and develop their staff.

Small firms – PC fee impact

125. In our assessment of the impact of the SBR reforms we said that there could be a negative impact on small firms if a relatively small number of large firms moved non-reserved activity out of SRA regulation. This would be because of the high proportion of non reserved legal services that they carry out. This would result in a reduction of the proportion of practising certificate fee income recovered from these firms, leading to an increase in the proportion recovered from other firms. There could also be a similar impact on fees if there was a consequential reduction in those working in authorised firms carrying out reserved legal activities.
126. It is unclear at the moment the extent to which firms will move their non reserved work out of SRA regulation; there are other market and regulatory factors that may restrict the movement of both clients and the non-reserved work. Many firms may choose not to set up separate businesses. The effect of any changes are likely to take place over several years.
127. Our proposed changes allowing solicitors to work in the alternative legal services market could mitigate any ultimate impact. This is because solicitors would no longer need to give up their practising certificates to work in alternative legal service providers or separate businesses and would continue to pay a practising certificate fee.
128. We are also carrying out a review of our fees policy to implement changes to fees in a phased manner and aligned to regulatory reforms. This will include looking at the appropriate balance in the practising certificate fee structure between the individual and entity components.

¹⁰⁶ ['We're not even at the fear stage'](#). Richard Susskind on a very different future for the legal profession by Dominic Carman, Legal Week, 17 November 2015

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Economist's report: Summary



Assessment of the economic rationale for, and possible impacts of, proposed changes to the Solicitors Regulation Authority Handbook

FINAL REPORT (Summary)

Prepared by:
Dr Christopher Decker

15 April 2016

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Summary

This paper provides an assessment of the potential economic benefits and risks associated with the proposed changes to the Solicitors Regulation Authority (SRA) Handbook. It also considers some of the possible impacts on competition, innovation and the cost of legal services of the proposed changes, and how different parties may be affected by these impacts.

The key findings of this paper, in summary, are:

- i. Any assessment of the risk and benefits of regulatory changes must be made within the relevant market context. In this case, this requires consideration of any specific rationales for regulation of legal services, the substantial changes that are currently occurring in the legal services market in England and Wales (in terms of business models and delivery mechanisms), as well as the need to balance consumer protection regulation and competition in the context of these market changes. The assessment in this report is made with regard to these framing issues.
- ii. The SRA is proposing a suite of changes to its Handbook and related regulatory arrangements, some of which can be categorised as refinements of its existing outcomes-focussed regulatory strategy, and some of which are more fundamental changes to existing legal services regulation. Of particular importance in the latter respect is the proposal to allow solicitors to provide certain legal services to the public, or sections of the public, through entities that are not subject to legal-services regulation.
- iii. In assessing this latter proposal it is necessary to understand the distinction between legal services involving 'reserved activities' and those that involve 'unreserved activities'. Reserved activities must always be delivered by regulated entities, although unreserved activities need not be. Solicitors are currently only able to provide legal services – including unreserved activities – to the public if the business they operate through is regulated by the SRA. By contrast non-solicitors may deliver unreserved activities to the public through entities that are not regulated by the SRA. The SRA proposes to align the treatment of solicitors and non-solicitors in this respect and allow solicitors to deliver unreserved activities to the public through non-SRA regulated entities (the SRA labels these 'alternative legal providers').
- iv. Having regard to the contextual frame described above, our assessment of the economic rationale – in terms of potential in-principle benefits and risks – of the various proposed changes to the SRA Handbook are set out in table 1 below.

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- v. In considering some of the possible impacts of the proposed changes on competition and innovation, and on different types of stakeholder (consumers, solicitors, providers), the important matter, from an economic perspective, is how the changes will impact on *behaviour*, which in turn has wider economic effects. Consistent with the general approach adopted in assessment exercises of this type, the possible impacts are examined relative to the current market and regulatory/policy context. That is, impacts are assessed relative to a counterfactual where the Handbook exists in its current form, the SRA applies an Outcomes Focussed Regulatory (OFR) approach, and where there are both regulated providers (such as traditional solicitor practices and alternative business structures) and providers of legal advice who are not subject to legal services regulation. Table 2 summarises our assessment of the possible impacts of the various proposed changes on key economic variables.
- vi. The potential economic impacts identified can be mapped across to different types of affected parties. Our assessment of the possible impacts on consumers, solicitors, regulated providers and non-solicitor firms who provide unreserved activities is summarised in table 3.
- vii. These tables indicate, in general terms, that consumers can be expected to benefit from the proposed changes to the extent that they: widen the number of providers and delivery mechanisms available to consumers; allow consumers increased access to the high standards of professionalism and education that is provided by solicitors; improve consumer understanding of the legal services market; and allow some consumers to trade-off certain protections for other benefits. Moreover, to the extent to which the changes result in more intense competition and innovation, this might ordinarily be expected to benefit consumers in the form of lower prices, alternative pricing arrangements, higher quality and the introduction of new products and services. All of this might draw more consumers into the market and address concerns about unmet demand.
- viii. On the other hand, and again in general terms, some consumers may be adversely impacted by the changes to the extent that they fail to address, or increase, confusion around the different protections attaching to services provided by solicitors through regulated providers and alternative legal providers, or if the professionalism of solicitors is eroded, or seen to be eroded, through practice in alternative legal providers. As discussed in this paper, consideration will need to be given as to whether such risks can be mitigated by appropriate measures in implementation of the proposed changes.
- ix. Finally, as emphasised throughout this report, regulatory arrangements often involve a level of compromise between specialist consumer protections and competition. Accordingly, even where a potential risk cannot be comprehensively mitigated in implementation, such risk or outcome must be weighed against the

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extent and magnitude of any potential benefits for consumers that may be associated with the changes in terms of greater competition and innovation.

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Table 1: Assessment of the economic rationale of the proposed changes

Proposal	Potential benefits	Potential risks
Restructure and simplify the Handbook	<ul style="list-style-type: none"> Simplification, through fewer, and clearer, principles and outcomes, may enable regulation to keep in step with some of the wider market changes, in particular the increasing diversity of business structures. Delineating the regulation of individuals from entities should assist the implementation of other proposed changes, particularly the change to allow solicitors to practice in alternative legal providers. 	<ul style="list-style-type: none"> May create material gaps in coverage leading to discord with policy objectives, and detrimental impacts on consumers. The extent to which this risk will arise will depend greatly on the content of the principles and codes of conduct and whether they are sufficient to cover all circumstances that may arise in practice, as well as whether the general principles are complemented by appropriate regulatory guidance. If the simplification results in unintended changes to the established meaning or understanding of words and concepts, this might impact on the achievement of regulatory objectives.
Reducing Handbook size and removing redundant or duplicative requirements	<ul style="list-style-type: none"> May improve understanding of solicitors, regulated providers and consumers of regulatory obligations and protections, and the basis on which enforcement actions and decisions are taken. This can enhance consumer confidence in the market and be market-expanding. Allowing economy-wide legislation to provide consumer protections where these are sufficient for legal-services consumers will avoid regulatory duplication and should reduce regulatory costs. 	<ul style="list-style-type: none"> May create material gaps in regulatory coverage. Mitigation of this will lie in the specifics of how this change is implemented.
Refining the outcomes-focussed regulatory approach and	<ul style="list-style-type: none"> May create greater clarity for solicitors and regulated providers as to the status of different requirements. Removing non-binding guidance from the Handbook should allow the new extrinsic guidance (e.g. online toolkits/case studies) to keep in step with changes in 	<ul style="list-style-type: none"> May increase uncertainty among regulatees as to what actions constitute regulatory compliance. Any such uncertainty could increase costs, and potentially foster growth in the third-party compliance industry. However, solicitors and regulated legal service entities might be

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removal of non-binding guidance	<p>the market, and any specific problems that emerge.</p> <ul style="list-style-type: none"> • May foster a mindset focussed on complying with regulatory objectives, and allow for new and innovative ways of compliance to develop across the diverse areas regulated. 	<p>expected to be more equipped than other professions when it comes to dealing with generality in legal provisions or regulations.</p>
Proposal	Potential benefits	Potential risks
Development of a series of public and business facing guides	<ul style="list-style-type: none"> • May empower consumers, by making it clearer which type of provider is most suited to their needs and requirements, and differences between providers in terms of service levels and protections. • More active and engaged consumers can expand the legal services market, and address some of the problems associated with unmet demand. 	<ul style="list-style-type: none"> • To be effective, careful thought will need to be given to the various target audiences of such guides, the information to be included and the accessibility of such information.
Allowing solicitors to deliver unreserved activities through alternative legal providers	<ul style="list-style-type: none"> • May increase competition by allowing solicitors to capitalise on their specific qualifications, skills and expertise in alternative legal providers. • May facilitate innovation and new methods of service delivery, which can be market-expanding and potentially address some of the issues associated with unmet demand for legal services. • Will expand the choice options for solicitors which could lead to an even more diverse legal market. • More opportunities for in-house providers to advise the public, or certain segments of the public, including vulnerable consumers (subject to their employment contracts). • Will 'level the playing field' for solicitors and non- 	<ul style="list-style-type: none"> • Certain consumer protections will not be available where services are provided by solicitors through alternative legal providers. (e.g. access to SRA Compensation Fund, regulated professional indemnity requirements and client money-holding rules). • Consumers may not have the benefit of legal professional privilege in relation to advice provided through an alternative legal provider (unless novel contractual arrangements are developed). • Consumers may fail to understand relevant distinctions, and to appreciate differences in consumer protections when using different providers. • Certain entity-level business stability and viability protections will not be available to consumers that use solicitors through alternative legal providers.

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	solicitors who provide unreserved services.	<ul style="list-style-type: none">• Consumers will not have the benefit of mandatory firm-wide conflict of interest protection (although firms may have voluntary policies which provide equivalent protections).
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Table 2: Potential economic impacts of the proposed changes

Indicator/variable	Potential impact
Entry, expansion and exit	<ul style="list-style-type: none"> • If large numbers of solicitors do, over time, choose to deliver unreserved activities through alternative legal providers, and consumers see these services as substitutes for those provided by solicitors operating through regulated firms, or by firms who deliver unreserved activities through non-solicitors, a material impact on entry, expansion, and therefore competition, can be anticipated. • Could encourage entry by new types of providers, such as legal technology firms. • There is also the possibility that the changes might result in some market exit. For example, if solicitors who deliver unreserved activities through alternative legal providers directly challenge, and attract a significant volume of business away from smaller regulated providers, or from firms who deliver similar services through non-solicitors. • Impact on entry and exit could be reduced if consumers place a high value on the protections only available through regulated providers, or if the new arrangements would severely compromise legal professional privilege and such privilege has high value to consumers (generally, or in relation to certain legal services e.g. tax advice)
Costs and prices	<ul style="list-style-type: none"> • The potential impacts on costs, and therefore prices, are likely to vary according to the effectiveness of measures introduced alongside each proposal (e.g. whether the online resources and toolkits are more effective in allowing solicitors to understand what they need to do to comply with regulatory principles and objectives). • It will also depend on the intensity of competition, and therefore the extent of any pass-through of cost changes into consumer prices. • The cost impact of the refinement of the outcomes-focussed approach will depend significantly on the extent to which such change reduces regulatory uncertainty. • Public and business facing guides should reduce consumer search costs and allow consumers to exert greater service and pricing pressure on legal service providers. • It is difficult to identify a direct cost impact of the proposals to allow solicitors to deliver unreserved activities to the public through alternative legal providers. However, the proposed change might result in reduced prices to the extent to which it intensifies competition in unreserved activities, or leads to entry by new providers with lower costs. • On the other hand, consumers who suffer loss as a result of fraud by, or the inadequate insurance of, a solicitor in an alternative legal provider, will not have access to the SRA Compensation Fund in relation to this loss (which is a cost to those consumers who would have been eligible to fund protection).

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Quality	<ul style="list-style-type: none"> Public and business facing guides could reduce the information asymmetry that some consumers of legal services face, and increase the countervailing power they can exercise in dealing with legal providers. Other things equal, more empowered and knowledgeable consumers should be able to demand higher quality services from legal providers.
Indicator/variable	Potential impact
Quality (continued)	<ul style="list-style-type: none"> Allowing solicitors to deliver unreserved activities through alternative legal providers could potentially lead to higher quality provision of unreserved activities (relative to them being provided by a firm who does not employ solicitors). However this depends on whether these services are considered by consumers to be a substitute for these same services provided by non-solicitors. Some concern has been expressed that solicitors acting in alternative legal providers may face fewer quality constraints than in regulated providers, or face pressure to provide poorer quality service. Whether or not this proves correct, the proposed Solicitors Code of Conduct should, if effectively drafted and enforced, condition the minimum standards expected of solicitors wherever they practise. Solicitors working through alternative legal providers will not be subject to entity-level supervision of quality. The significance of this will depend on the extent to which the SRA adapts its supervision toward the individual level. There may be quality impacts for consumers if legal professional privilege is not available in relation to services provided by alternative legal providers. Similarly, there may be quality impacts of consumers not having the benefit of automatic firm-wide conflict of interest protection.
Innovation	<ul style="list-style-type: none"> The refinement of the outcomes-focussed approach to regulation might foster innovation in compliance and create conditions for technological innovation by allowing those subject to regulation the freedom to experiment with alternative processes and technologies, which might lower production costs or improve quality. However, such changes could also potentially chill innovation if they create greater uncertainty. Allowing solicitors to deliver unreserved activities through alternative legal providers may provide opportunities for innovative service bundling for consumers, and other innovations in service delivery commensurate with the potentially great variety of non-law firms' business models. This could include the development of new methods of accessing legal services (e.g.: legal exchanges).

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Demand for legal services	<ul style="list-style-type: none"> Public and business facing guides could improve consumer understanding of their rights and obligations, instil a higher degree of confidence in the legal service market, and reduce search costs. This could encourage more consumers to purchase legal services. Allowing solicitors to deliver unreserved activities through alternative legal providers could, in principle, lead to a greater number and diversity of providers of regulated legal services. Some of these providers might introduce new delivery mechanisms – for example, through retail outlets or via the Internet – which could tap into unmet demand for a service of regulated quality provided through less intimidating or more convenient avenues. Some current providers might exit, particularly smaller providers, which could potentially have impacts on demand and access to justice if the exit of such providers is concentrated in specific geographical locations or particular customer segments.
Indicator/variable	Potential impact
Wider economic impacts	<ul style="list-style-type: none"> To the extent to which the proposed changes remove unnecessary restrictions on trade, this may result in the development of alternative delivery mechanisms and service provisions which might reduce the time and cost associated with acquiring legal services and lower transactions costs. Conversely if the proposed changes increase confusion and uncertainty this could reduce confidence in the legal services market and could increase transaction costs.

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Table 3: Possible impacts on various affected parties

Affected party	Potential positive impacts	Potential adverse impacts
Consumers	<ul style="list-style-type: none"> Consumers could benefit from the proposed changes to the extent that they: improve consumer understanding of the legal services market; widen the number of providers and delivery mechanisms available; increase access to the high standards of professionalism and education that is provided by solicitors; and allow some consumers to trade-off some protections for additional benefits. If the changes result in more intense competition and innovation this could benefit consumers in the form of lower prices, alternative pricing arrangements, higher quality and the introduction of new products and services. This could also draw more consumers into the market and address concerns about unmet demand. 	<ul style="list-style-type: none"> Consumers who suffer loss as a result of fraud by, or the inadequate insurance of, a solicitor in an alternative legal provider, will not have access to the SRA Compensation Fund in relation to this loss. They will have access to avenues of redress available to all consumers. Consumers may not have the benefit of legal professional privilege in relation to advice provided through an alternative legal provider (unless novel contractual arrangements are developed). Consumers may be confused by the different protections attaching to services provided by solicitors through regulated and alternative legal providers, and may find it difficult to make informed decisions. A concern raised in some quarters is that consumers may, for reasons associated with the loss of entity-level supervision, receive lower quality services from solicitors in alternative legal provider. Consumers will not automatically have the benefit of firm-wide protection in relation to conflicts of interests with other clients of the provider.
Solicitors	<ul style="list-style-type: none"> The specific impacts on solicitors are likely to differ according to the structure through which they deliver legal services, and how responsive they are to the changes (i.e.: whether they see them as an opportunity). Changes to the structure and content of the Handbook could result in benefits for solicitors by 	<ul style="list-style-type: none"> There is potential for misunderstanding of the new compliance arrangements, although solicitors should be better equipped than most to understand, and deal with, regulatory changes. The replacement of detailed indicative behaviours may create additional work for practitioners in determining how best to exercise their permitted discretion to best meet regulatory outcomes in their particular circumstances, increasing the costs

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	clarifying their regulatory obligations, reducing their compliance burden (by removing duplicative or redundant requirements) and allowing them greater freedom and agency in determining how to comply with various principles and outcomes.	and time associated with compliance.
Affected party	Potential positive impacts	Potential adverse impacts
Solicitors (continued)	<ul style="list-style-type: none"> • Refinements of the outcomes-focussed approach should reduce the frequency with which changes to the Handbook are made, and therefore the need for solicitors to constantly keep abreast of such changes. • Removing restrictions on the ability of solicitors to deliver unreserved activities to the public outside regulated providers could benefit solicitors by increasing the scope for them to leverage their specialist skills, knowledge and expertise into new areas, and through alternative providers and delivery mechanisms. This is likely to particularly benefit solicitors who are responsive to consumer needs and preferences. • The 'solicitor' brand could be strengthened by increasing the visibility and accessibility of solicitors, and improving understanding of the specialist skills and knowledge they can offer. In addition, if solicitors come to be perceived as less 'elite', this may widen access and attract more consumers to use their services. 	<ul style="list-style-type: none"> • There is a concern in some quarters that solicitors working in alternative legal providers might face pressure from such providers to 'cut corners' or compromise their professional principles in the interest of commercial expediency. While it is not possible to predict whether such a conflict may arise, the solicitor themselves should, as the regulated party, have strong disincentives to compromise the professional principles to which they will remain subject under their Code of Conduct. • The 'solicitor' brand could be diminished as solicitors come to be associated with different type of providers and with varying levels of consumer protections. This will depend on consumer expectations of what is included in the provision of solicitor services, and the value they attribute to different aspects of this.
Regulated providers	<ul style="list-style-type: none"> • Proposals to simplify and remove duplicative and redundant requirements should benefit regulated 	<ul style="list-style-type: none"> • The potential impacts on regulated providers will differ according to their size, location and the relative proportion of

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	<p>providers by reducing complexity, and potentially the regulatory burden on regulated providers.</p> <ul style="list-style-type: none"> • Allowing individual solicitors to deliver unreserved activities to the public by practising in an alternative legal provider may have impacts in terms of attracting and retaining staff, and some solicitors may decide to deliver solely unreserved activities through an alternative legal provider. • Could have impacts in terms of the ability to compete with alternative legal providers, particularly those with strong consumer brand recognition. 	<p>reserved and unreserved activities they undertake.</p> <ul style="list-style-type: none"> • The potential impact on smaller traditional regulated providers is more difficult to assess. Some changes have the potential to reduce the burden and costs associated with complying with regulation. However, the ability to deal with the competitive threat of solicitors working in alternative legal providers may be more limited for smaller providers as, for various reasons (such as their location) they may have to continue to deliver both reserved and unreserved activities.
Affected party	Potential positive impacts	Potential adverse impacts
Regulated providers (continued)	<ul style="list-style-type: none"> • Larger providers, and those which target business customers, are likely to be best placed to adapt to changes in the legal services market. Some of the more innovative providers may see this as an opportunity to introduce new compliance and delivery methods. • Some currently regulated providers may choose to focus only on unreserved activities in the future, and therefore avoid the costs and obligations of entity regulation. 	<ul style="list-style-type: none"> • If re-writing the Handbook changes the meaning of words and concepts, this can have cost and training implications for regulated providers.
Firms who provide unreserved activities through non- solicitors	<ul style="list-style-type: none"> • Most of the proposed changes – in so far as they relate to regulatory requirements and obligations – will not impact on firms who deliver ‘legal services’ through non-solicitor advisors. • However, alternative legal providers, who use solicitors to deliver unreserved activities under the changes, may benefit from offering a differentiated 	<ul style="list-style-type: none"> • Firms who deliver unreserved activities through non-solicitor advisors will, under the changes, potentially face more intense competition for some of these services from alternative legal providers. • The extent of this impact will depend on how substitutable the two types of services are. Such increased competition itself is not an economic risk, but could be so if the provision of certain

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	<p>service to firms who provide the same services through non-solicitors.</p> <ul style="list-style-type: none">• Such providers will also have the potential to 'opt-in' to regulation. The incentive to do so might arise for cutting-edge or innovative providers who want to reassure consumers that they are subject to various controls and processes, and that service users will be afforded traditional protections, including the benefit of legal professional privilege.	<p>services by non-solicitors discontinued in the market in circumstances where consumers did not, or could not afford to, then obtain those services from solicitors.</p>
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